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IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 71-2761

On Petitions to Review Orders of the Federal Power Commission

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JOINT APPENDIX

(PART I)

SOUTHERN LOUISIANA AREA RATE CASE
PLACID OIL COMPANY, ET AL.,
Petitioners,

v.

FEDERAL POWER COMMISSION,
Respondent.

[11,030]

Order Instituting Investigation and Proposed Rulemaking

[11,030]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Lee C. White, Chairman; L. J. O' Connor, Jr., Carl E. Bagge, John A. Carver, Jr., and Albert B. Brooke, Jr.

Docket No. AR69-1

AREA RATE PROCEEDING
(OFFSHORE SOUTHERN LOUISIANA FEDERAL DOMAIN AND DISPUTED AREAS)

ORDER INSTITUTING INVESTIGATION AND PROPOSED RULEMAKING

(Issued March 20, 1969)

By Opinion Nos. 546 and 546-A and accompanying orders we established just and reasonable rates for sales of natural gas in Southern Louisiana, including the offshore areas. In Opinion No. 546 we noted that the record in that proceeding did not contain separate cost figures for the results of drilling in the Federal domain or for offshore generally. (Mimeo p. 135). We expressly invited a petition to reconsider the far offshore rates (p. 138).

On January 8, 1969, the New York Public Service Commission filed a request that the Commission institute an investigation into the adequacy of gas reserves held or controlled by the major producers and pipelines, and the claims of a shortage of natural gas. In explaining its reasons why it believes an investigation is necessary, the New York Commission referred to a December 16, 1968, letter sent by the American Gas Association to

the Commission which it interprets as asserting that distributors and pipelines are being refused service by many producers on the ground that the prices found in our area decisions to

[11,031]

be just and reasonable are inadequate. The New York Commission gave three reasons why such a refusal to serve, if it exists, is sufficiently serious to warrant formal investigation:

> First, such a shortage, if proven on an evidentiary record, would require a review to determine the reasons therefor and the appropriate regulatory response thereto.
>
> Second, to the extent that the actual or threatened withholding of gas was being used to coerce parties to FPC proceedings to modify their positions, it would be essential for the FPC to take corrective measures to protect the integrity of its processes.
>
> Third, any group effort to fix the price at which natural gas shall be sold in interstate commerce, and any group refusal to sell gas to particular customers or groups of customers, would constitute 'apparent violations of the Federal antitrust laws' which the Commission is obliged to call to the attention of the Attorney General under Section 20(a) of the Natural Gas Act.

The New York Commission suggested that the scope of the investigation might appropriately be limited to the offshore area of Southern Louisiana, noting that because of the importance of this area the need for reliable information with respect thereto is especially compelling. The Secretary of the Federal Power Commission issued public notice of the investigation request on January 16,

1969, Docket No. RI69-470, inviting any interested persons to submit written comments thereon.

On January 22, 1969, certain producer-respondents in the Southern Louisiana area proceeding filed a joint

[11,032]

motion [1] seeking a limited reopening of the record in Docket No. AR61-2. Movants ask the reopening be granted in order "to receive additional evidence demonstrating the substantial changes in supply-demand relationships for natural gas which have occurred since the record was closed over three years ago." Movants state that if a limited reopening is granted they would promptly tender evidence covering the following matters:

1. The unavailability of adequate gas supplies to satisfy present and reasonable anticipated future consumer demands.
2. The need for *immediate* corrective action due to the lead time required before improved producer price incentives can achieve higher levels of finding and development of new reserves.
3. The appropriate regulatory response to the present serious gas supply problem.
4. The significance and importance of revenues from flowing gas as a source of capital funds for the substantial new investments required to reverse the dangerous current trends in supply and demand.

---

[1] The movants are listed in the motion as Texaco Inc., Gulf Oil Corporation and The British-American Oil Producing Company, Pan American Petroleum Corporation, Shell Oil Company, Union Oil Company of California and Humble Oil & Refining Company. Numerous other parties have subsequently filed similar motions or joined in the motion. Oppositions have also been filed.

As to the investigation requested by the New York Public Service Commission, movants ask that that investigation,

[11,033]

if the request is granted, be consolidated in the proposed reopening of Docket No. AR61-2.

Additionally, in responding to various requests for further oral argument in Docket No. AR61-2, certain distributor interveners suggested that the Commission obtain additional evidence as to the need of revision of the offshore price applicable to future contracts.

In Opinion Nos. 546 and 546-A we noted our concern with respect to the adequacy of the evidence in the record relating to cost of gas produced in the Federal domain [2] along with our desire to encourage a continued active program of exploration in the area.[3] This in part led us to establish a series of price differentials between state domain and Federal domain production which is less that the amount of the State tax. Most importantly, however, we extended a clear invitation in the Opinion for the filing of a petition to reconsider the far offshore rates whenever the parties believed that sufficient evidence was at hand, or could be presented, to indicate a need for a change in price.

We observed in Opinion No. 546 that "certain input costs are higher in deep offshore waters than elsewhere" but that "Gas reserves data have not been satisfactorily correlated, however, with such costs" (mimeo p. 130). We similarly acknowledged the unsatisfactory status of available data on time lags and called on staff and interested parties "to undertake a more exhaustive inquiry * * * both nationally and for key production areas and

[2] Mimeo pp. 129, 130, 135.

[3] Mimeo p. 135.

subareas, such as the offshore Federal domain of Southern Louisiana." (Mimeo p. 38). We believe that a further proceeding investigating the correlation between

[11,034]

reserves found, including reserves not yet dedicated, and costs incurred in the offshore areas would be in the public interest. We shall therefore institute an investigation of offshore gas supply and costs associated therewith. The proceedings will encompass the offshore area described as Zones 2, 3 and 4 in the Interim Agreement between the United States and the State of Louisiana, dated October 12, 1956, as amended, excluding however lands awarded to the State of Louisiana by Supplemental Decree of the Supreme Court of the United States, entered December 13, 1965 (382 U.S. 288).[4]

If, as a result of this investigation and rulemaking proceeding, higher rates are established for fourth vintage gas-well gas sales from the area encompassed herein, we anticipate that we shall amend the just and reasonable ceilings to have prospective application to third vintage offshore gas-well gas rates,[5] and that such new rates will also govern refunds under contractually authorized increased rates filed for and made effective as a result of the modification of the Opinion 546 moratorium, but subject to the limits imposed in Opinion

[4] The parties will be free at the conference hereafter set to raise the issue whether such geographical demarcation should be changed. See Area Rate Proceeding (*Texas Gulf Coast Area*), 31 FPC 922; *Area Rate Proceeding* (*Other Southwest Area*), 38 FPC 1135. In case of any change of demarcation line we would, of course, consider a prospective change of the moratorium fixed in Opinion No. 546-A for on-shore third vintage gas.

[5] This provision is equally applicable to those contracts executed prior to October 1, 1968, which under the special relief granted by Opinion No. 546-A are treated as having been executed on or after October 1, 1968.

546-A. The just and reasonable rate established by Opinion 546 and 546-A will, however, constitute a refund floor in connection with any increased rates filed as a result of the lifting of the moratorium on offshore third vintage production. As noted in Opinion No. 546-A, if a lower rate is established for fourth-vintage contracts than the third-vintage price, such lower area rate will not be applied to deliveries thereafter made under the third-vintage contracts.

[11,035]

The rapid growth in the offshore area has meant that large expenditures have been made for leases and drilling in this area in recent years. Production of much of the gas discovered, however, is in an early build-up stage. The data required for the correlation of gas reserves found in offshore Southern Louisiana with the costs associated therewith are in the possession of the lessees in the offshore area. For the purpose of determining the lag period between investment and production, and the unit costs incurred during the build-up period to full production, it would appear to be necessary to obtain hydrocarbon reserve, production, and cost data by leases. Rather than prescribing a procedure for reporting such data or for staff field studies, we shall provide for a conference or conferences of interested parties and the staff and after consideration of conference discussions, we shall issue further orders with respect to the matters involved in this proceeding. We are interested not only in experienced cost-finding relationships, but also in the general question of potential supply in the area.

The various pleadings filed with us assert a critical supply situation exists which requires prompt remedial action. We shall therefore expect the utmost cooperation of the parties to the end that necessary data be promptly

reported and the hearings, if any, be expeditiously completed.

In order that we may have complete information respecting the Southern Louisiana area and in order to avoid cumulative evidence, we shall incorporate in this proceeding by reference the entire record in Docket No. AR61-2.

Any rule adopted as a result of this proceeding will be applicable to all future independent producer sales of natural gas from the offshore area. While we desire data from pipeline producers in the offshore area, the rate treatment accorded such production will be consistent with our treatment of such production in the Pipeline Production Area Rate Case, Docket No. RP66-24. A list of rspondents including the purchasers

[11,036]

of offshore leases, natural-gas companies having rate schedules on file for this area and pipelines operating in the area is attached. Evidentiary hearings should be held to the extent that factual controversies arise.

The Commission finds:

It is necessary and appropriate for purposes of carrying out the provisions of the Natural Gas Act, particularly but not in limitation of the foregoing, Sections 5, 8, 10, 14, and 16 thereof, that an investigation, hearing, and rulemaking proceeding be instituted to determine whether the just and reasonable area ceiling rates prescribed in Opinion Nos. 546 and 546-A which are applicable to sales of third vintage gas-well gas from the offshore Southern Louisiana area encompassed by this proceeding should be raised and any such increased ceiling made applicable to sales of such third vintage gas-well gas being made subject to refund pursuant to in-

creased rate filings authorized by ordering paragraph (A) of Opinion No. 546-A, and whether fourth vintage area rate ceilings should be established applicable to sales of gas-well gas from the area encompassed herein pursuant to contracts dated at some date after the final order in this proceeding to be specified herein.

The Commission orders:

(A) An investigation and rulemaking proceeding is instituted concerning the issues specified in the above finding and a conference shall be held concerning the same as hereinafter provided. Unless otherwise ordered by the Commission, the proceedings shall encompass the offshore area described as Zones 2, 3 and 4 in the Interim Agreement between the United States and the State of Louisiana, dated October 12, 1956, as amended, excluding lands awarded to the State of Louisiana by Supplemental Decree of the Supreme Court of the United States entered December 13, 1965 (382 U.S. 288).

(B) The purchasers of offshore leases, natural-gas companies having rate schedules in the area and pipelines operating in the area as listed in Appendix A are made respondents in this proceeding.

[11,037]

(C) A conference will be held at the Commission offices at 441 G Street, N.W., Washington, D.C., between respondents, interveners, and Commission staff concerning the issues and procedures to be followed. The Chief Examiner, or an Examiner designated by him, shall preside at the hearing hereby called and shall prescribe the date thereof. Upon completion of this conference and any other conferences which may be deemed necessary, a transcript thereof shall be transmitted to the Commission for further action.

(D) Any party who has intervened in Docket No. AR61-2 may become an intervener in this proceeding by filing notice thereof within 30 days of the date of issuance hereof in the manner provided by Section 1.8(a)(1) of the Commission's Rules of Practice and Procedure. Other persons may within such 30 days file petitions to intervene or notices of intervention as provided by Section 1.8 of the Rules of Practice and Procedure.

(E) In order that the issues involved herein may be properly determined, offshore lessees are hereby directed pursuant to the provisions of Sections 8, 10, and 14 of the Natural Gas Act to grant to authorized members of the staff of the Federal Power Commission, during regular business hours, free access to their property and access to and the right to inspect and examine all of their accounts, records, and memoranda including, but not limited to, the books, papers, correspondence, contracts, agreements, maps, reports of engineers, logs, and other data pertinent to the investigation herein authorized and upon staff request shall furnish copies of such material to the staff.

(F) The Secretary shall cause a copy of this order to be published in the FEDERAL REGISTER and served upon each of the respondents set out in Appendix A and upon interested State Commissions as is provided for in Section 1.19 of the Commission's Rules of Practice and Procedure.

By the Commission. Commissioner Carver concurring filed a separate statement appended hereto.

[SEAL]

GORDON M. GRANT
Secretary

[11,038]

Docket No. AR69-1

AREA RATE PROCEEDING
(OFFSHORE SOUTHERN LOUISIANA FEDERAL DOMAIN AND DISPUTED AREAS)

(Issued March 20, 1969)

CARVER, Commissioner, *concurring*:

In view of the Commission's action in Opinion No. 546-A, issued this date over my extensive dissent, I am reluctantly required to concur in this order as a less desirable course of action to achieve a necessary result.

/s/ John A. Carver, Jr.
JOHN A. CARVER, JR.
Commissioner

[11,039]

APPENDIX A

Amerada Petroleum Corporation
P. O. Box 2040
Tulsa, Oklahoma 24101

Apco Oil Corporation
Liberty Bank Building
Oklahoma City, Oklahoma 73102

Atlantic Richfield Company
P. O. Box 2819
Dallas, Texas 75221

Austral Oil Company, Inc.
2700 Humble Building
Travis at Bell
Houston, Texas 77002

British American Oil Producing Company
c/o W. E. Schoeneck, Vice President
P. O. Box 749
Dallas, Texas 75221

Cabot Corporation
P. O. Box 1101
Pampa, Texas 79066

California Oil Company, A Division of Chevron Oil Company
800 The California Company Building
1111 Tulane Avenue
New Orleans, Louisiana 70112

Cal-Ky Pipe Line Company
Fourth and Walnut Streets
P. O. Box 1446
Louisville, Kentucky 40202

Chandeleur Pipe Line Company
Starks Building
Fourth and Walnut
Louisville, Kentucky 40402

Cities Service Oil Company
Cities Service Building
Bartlesville, Oklahoma 74003

Colorado Oil and Gas Corporation
Box 749
Denver, Colorado 80201

Columbia Gas System, Inc.
120 East 41st Street
New York, New York 10017
Attention: John W. Partridge, President

Columbia Gulf Transmission Company
Box 683
Houston, Texas 77001

Columbia Offshore Pipe Line Company
915 Coolidge Boulevard
Lafayette, Louisiana 70501

Consolidated Gas Supply Corporation
445 West Main Street
Clarksburg, West Virginia 26302

Consolidated Natural Gas Company
H. B. Griffith, Jr.
Consolidated Natural Gas Service Company
4 Gateway Center
Pittsburgh, Pennsylvania 15222

[11,040]

Continental Oil Company
P. O. Box 2197
Houston, Texas 77001

Dixilyn Drilling Corporation
P. O. Box 3427
Odessa, Texas 79760

El Paso Natural Gas Company
El Paso Natural Gas Building
Box 1492
El Paso, Texas 79999

Essex Royalty Corporation
285 Madison Avenue
New York, New York 10017

Felmont Oil Corporation
285 Madison Avenue
New York, New York 10017

Florida Gas Transmission Company
P. O. Box 44
Winter Park, Florida 32789

Forest Oil Corporation
1300 National Bank of Commerce Building
San Antonio, Texas 78205

General American Oil Company of Texas
Meadows Building
Dallas, Texas 75206

General Crude Oil Company
P. O. Box 2252
Houston, Texas 77001

Geological, Geophysical Associates, Inc.
1140 Oil and Gas Building
New Orleans, Louisiana 70112

Getty Oil Company
P. O. Box 1404
Houston, Texas 77001

Gulf Oil Corporation
P. O. Box 1589
Tulsa, Oklahoma 74102

Hamilton Brothers Oil Company
1517 Denver Club Building
Denver, Colorado 80202

Hanna Mining Company
100 Erie View Plaza
Cleveland, Ohio 41114

Highland Oil Company
Twelfth Floor, San Jacinto Building
Houston, Texas 25276

Humble Gas Transmission Company
1700 Commerce Building
New Orleans, Louisiana 70112

Humble Oil & Refining Company
P. O. Box 2180
Houston, Texas 77001

Hunt Oil Company
1401 Elm Street
Dallas, Texas 75202
Attention: Sidney Latham, Vice President

Jupiter Corporation
208 South LaSalle Street
Chicago, Illinois 60602

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Kern County Land Company
P. O. Box 2511
Houston, Texas 77001

Kerr-McGee Corporation
Kerr-McGee Building
Oklahoma City, Oklahoma 73102

Kewanee Oil Company
P. O. Box 2239
Tulsa, Oklahoma 74101

Louisiana Land & Exploration Company
P. O. Box 60350
New Orleans, Louisiana 70150

Marathon Oil Company
539 South Main Street
Findlay, Ohio 45840

J. Ray McDermott & Company, Inc.
Fourteenth Floor Houston Club Building
Houston, Texas 77002

McWood Corporation
203 Oil and Gas Building
Abilene, Texas 79601
Attention: Ray McGlothlin, Jr.
Vice President

Metals Service Company
1006 Southwest Tower
Houston, Texas 77002

Michigan Wisconsin Pipe Line Company
One Woodward Avenue
Detroit, Michigan 48226

Mississippi River Corporation
9900 Clayton Road
St. Louis, Missouri 63124

Mobil Oil Corporation
P. O. Box 2444
Houston, Texas 77001

Monsanto Company
1300 Main Street
Houston, Texas 77002

Murphy Oil Corporation
200 Jefferson Avenue
El Darado, Arkansas 71730

Natural Gas and Oil Corporation
1315 Richards Building
New Orleans, Louisiana 70112

Natural Gas Pipe Line Company of America
122 South Michigan Avenue
Chicago, Illinois 60603

Newmont Oil Company
1300 Main at Polk
Houston, Texas 77002

Ocean Drilling & Exploration Company
303 Murphy Building
El Darado, Arkansas 71730

Offshore Operators, Inc.
215 Niels Esperson Building
Houston, Texas 77002

Oil & Gas Futures, Inc.
2200 South Post Oak Road
Suite 700
Houston, Texas 77027

[11,042]

Pan American Petroleum Corporation
Pan American Building
P. O. Box 591
Tulsa, Oklahoma 74101

The Peoples Natural Gas Company
445 West Main Street
Clarksburg, West Virginia 26302

Phillips Petroleum Company
Phillips Petroleum Building
Bartlesville, Oklahoma 74004

Placid Oil Company
2500 First National Bank Building
Dallas, Texas 75202

The Preston Oil Company
P. O. Box 1350
Houston, Texas 77001

St. Helens Petroleum Corporation
c/o Ocean Drilling and Exploration Company, Agent
Caribe Building
2475 Canal Street
New Orleans, Louisiana 70119

Samedan Oil Corporation
P. O. Box 959
Ardmore, Oklahoma

Sea Robin Pipeline Company
Box 1407
Shreveport, Louisiana 71102

Joseph E. Seagram & Sons, Inc.
d/b/a Texas Pacific Oil Company
P. O. Box 747
Dallas, Texas 75221

Shell Oil Company
50 West 50th Street
New York, New York 10020

Signal Oil & Gas Company
P. O. Box 17126
Foy Station
Los Angeles, California 90017

Sinclair Oil Corporation
P. O. Box 521
Tulsa, Oklahoma 74101

Skelly Oil Company
P. O. Box 1650
Tulsa, Oklahoma 74101

Sohio Petroleum Company
970 First National Office Building
Oklahoma City, Oklahoma 73102

Southern Natural Gas Company
P. O. Box 2563
Birmingham, Alabama 35202

Sun Oil Company
1608 Walnut Street
Philadelphia, Pennsylvania 19105

Sunray DX Oil Company
P. O. Box 2039
Tulsa, Oklahoma 74101

The Superior Oil Company
P. O. Box 1521
Houston, Texas 77001

Tenneco Oil Company
P. O. Box 2511
Houston, Texas 77001

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Tennessee Gas Pipeline Company
P. O. Box 2511
Houston, Texas 77001

Texaco, Inc.
Gas Division
P. O. Box 52332
Houston, Texas 77052

Texas Eastern Transmission Corporation
Box 2521
Houston, Texas 77001

Texas Gas Exploration Corporation
555 Main Building
1212 Main Street
Houston, Texas 77002

Texas Gas Transmission Corporation
3800 Frederica Street
Owensboro, Kentucky 42301

Transcontinental Gas Pipe Line Corporation
Box 1396
Houston, Texas 77001

Trunkline Gas Company
P. O. Box 1642
Houston, Texas 77001

Union Carbide Petroleum Corporation
1200 Travis, Suite 912
Houston, Texas 77002

Union Oil Company of California
Manager Natural Gas & Gasoline Department
Union Oil Center
Los Angeles, California 90017

Union Producing Company
1525 Fairfield Avenue
Shreveport, Louisiana 71101

Union Texas Petroleum, A Division of Allied Chemical Corporation
P. O. Box 2120
Houston, Texas 77001
Attention: Gas Department

United Fuel Gas Company
1033 Quarrier Street
Charleston, West Virginia 25301

United Gas Pipe Line Company
P. O. Box 1407
Shreveport, Louisiana 71102

Zapata Offshore Company
1701 Houston Club Building
Houston, Texas 77002
(Now Apache Oil Company)

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[Caption Omitted]

MOTION BY TEXACO INC., ET AL., FOR ORAL ARGUMENT

The undersigned independent producers, hereinafter referred to as "Movants," hereby request that the Federal Power Commission ("Commission") grant oral argument prior to determinations on (1) the type of hearing and the scope of issues related thereto which are to be involved in Docket No. AR69-1; (2) the Joint Petition Of Phillips Petroleum Company And Other Indicated Independent Producers For Order Instituting And Reopening Area Rate Proceedings filed in Docket No. RI69-753; and (3) the Joint Petition To Waive Or Lift The Limitation On Rate Change Filings by Shell Oil Company, *et al.*, in Docket No. RI70-73. In support hereof, Movants state as follows:

I.

On September 25, 1968, the Commission issued its

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Opinion No. 546 in *Area Rate Proceeding (Southern Louisiana Area)*, Docket No. AR61-2, *et al.*, 40 FPC 530, wherein it established rates for sales of natural gas from the Southern Louisiana Area, including sales from the Federal Domain offshore area designated as Zones 2, 3 and 4. Subsequently, on March 20, 1969, the Commission issued its Opinion No. 546-A and rejected petitions by producers, pipelines, distributors and other interested parties for a reopening of the record for the purpose of revising the rates established by Opinion No. 546. Nevertheless, the Commission ordered the institution of a new proceeding applicable to the Federal Domain offshore area and in referring to such, it stated:

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Motion by Texaco Inc., et al., for Oral Argument

> ". . . the vital importance of future additional gas supply from the offshore areas in Southern Louisiana warrants the immediate commencement of the further proceeding we had contemplated in our original Opinion herein looking towards a possible revision of the area price ceilings for such gas." (Slip Opinion No. 546-A, p. 2)

The Commission formally promulgated such new proceeding by separate order issued in Docket No. AR69-1 on March 20, 1969, and ordered the convening of conferences between the various parties and the Commission Staff for the purpose of defining the issues and procedures and narrowing differences. The Commission directed that at the conclusion of these conferences the Presiding Examiner would

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transmit the record to it for further action.

II.

Numerous conferences were held between all parties up through August 14, 1969 when the Examiner closed the prehearing conference record. At the first prehearing conference convened on July 8, 1969, the parties outlined their basic positions (Tr. 12-104). During the succeeding conferences, substantial progress was made in working out differences, particularly with reference to the form and substance of data collection questionnaires. On August 14, the parties reported to the Examiner that there remained critical disagreements as to the data required because of fundamental differences concerning the issues and type of hearing necessary to resolve such issues. It became apparent that such issues could only be resolved by the Commission and then possibly the courts.

The fundamental determination which must be made at this juncture by the Commission is whether Docket No. AR69-1 is to be the vehicle for regressive rate making concepts requiring a minimum of a three to five year hearing or whether it is to be an expedited hearing lasting less than a year aimed at supplementing the already voluminous record in the *Southern Louisiana Area Rate Proceeding*. The Movants' recommendation is that the

hearing stage, including data collection, can and should be completed within a year by utilizing the existing record in Docket No. AR61-2, plus certain supplemental information which will in part be obtained through simplified questionnaires. For the convenience of the Commission, set out in the attached Appendix is a concise analysis of our position. Movants' direct case can be prepared and filed within 60 to 90 days from the date of the Commission's further order to be issued herein.

The Staff on the other hand has proposed that Docket No. AR69-1 be used as the testing ground for previously rejected rate making concepts based on reservoir, lease or field costs and with reserves data gathered from each of the producers selling gas in Zones 2, 3 and 4. Inherent in Staff's proposal are (1) not less than a six to nine month data collection period; (2) a time-consuming compilation by Staff of the voluminous information reported; (3) thereafter, adequate time to give the parties the opportunity to prepare their cases based on such detailed data; (4) protracted hearings with extensive cross-examination; plus (5) all other regulatory steps such as briefs to the Examiner, an Examiner's decision, Briefs on Exceptions, and a Commission decision. Realistically, Staff's concept entails at the minimum

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a three to five year lapse of time before a Commission decision could be rendered.[1] History indicates that several years of judicial review would then commence.

III.

The subject proceeding is one of the most important investigations undertaken by the Commission since the Supreme Court's 1954 decision in *First Phillips* in view of the vast potential in this area for contributing new supplies for the nation's increasing gas needs. Representatives of all segments of the natural gas industry, pipelines, distributors, and producers have filed pleadings with the Commission urging it to take immediate steps to correct a supply crisis which is getting worse with each passing month.

The Commission's decision at this juncture may well be as important to the future of natural gas supply as the final decision. The order which is to be issued here will control whether (1) a one or three to five year hearing will be conducted; (2) Bureau of the Budget clearance will have to be obtained prior to issuance of questionnaires; (3) published information will be

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utilized or lease-by-lease data or area composite data will be collected; (4) court review may be required concerning the type of data ordered collected, particularly confidential reserve and cost information; and, most importantly, (5) the Commission will exercise its power to dispel the dark cloud hanging over the nation's future supply of natural gas.

[1] If the Commission determines that area costs are to be used, United Distribution Companies have prepared area composite questionnaires which will avoid onerous lease-by-lease reporting.

IV.

Exploration of the issues involved in the pending petitions filed in Docket No. RI69-753 for enlargement of the hearing area and the inclusion of all vintages of gas, as well as in the petition filed in Docket No. RI70-73 to lift the moratorium imposed by Opinions No. 546 and 546-A can consistently, profitably and expeditiously be consolidated with the oral argument concerning the scope of the hearing and issues involved in Docket No. AR69-1.

The cardinal importance and complex nature of the issues involved requires that oral argument be afforded in order that the parties may answer any questions the Commission may have. Further, oral argument is especially important in this case since no briefs have been filed on these issues with the Commission.

WHEREFORE, the Movants hereby request that the parties be granted the opportunity to present oral argument to the

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Commission, that the earliest possible date be set for such argument, and that Movants be allotted two (2) hours to make their oral presentation.

Respectfully submitted,

TEXACO INC.
P. O. Box 52332
Houston, Texas 77052
J. DONALD ANNETT
ROBERT E. NEWEY

By /s/ J. Donald Annett
J. DONALD ANNETT
Attorney for Texaco Inc.

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Motion by Texaco Inc., et al., for Oral Argument

And on Behalf of:

Amerada Hess Corporation
Atlantic Richfield Company
Cities Service Oil Company
Continental Oil Company
Forest Oil Corporation
Getty Oil Company
Gulf Oil Corporation
Humble Oil & Refining Company
Kerr-McGee Corporation
Marathon Oil Company
Mobil Oil Corporation
Pan American Petroleum Corporation
Phillips Petroleum Company
Shell Oil Company
Signal Oil and Gas Company
Skelly Oil Company
Sun Oil Company
Tenneco Oil Company
Union Carbide Petroleum Corporation
Union Oil Company of California
Hamilton Brothers Oil Company

September 4, 1969

Houston, Texas

APPENDIX

STATEMENT OF POSITION BY MOVANTS ON ISSUES AND PROCEDURES

In order to assist the Commission in making determinations concerning the type of hearing and procedures and scope of the issues which are to be involved in the investigation and proposed rule making in *Area Rate Proceeding (Offshore Southern Louisiana Federal Domain and Disputed Areas)*, Docket No. AR69-1, the Movants set forth below their position.

I.

RECOMMENDATIONS OF MOVANTS

A. *The Hearings And Reporting Of Data Must Be Expeditiously Completed.*

The Commission at page 6 of its March 20, 1969 order instituting Docket No. AR69-1 explicitly stated that it expected the utmost cooperation of the parties to the end that necessary *data be promptly reported and the hearings, if any, be expeditiously completed.* The obvious reason for this position by the Commission was that there is an abundance of evidence indicating that the available supply of natural gas in the United States, and particularly from the Southern Louisiana Area, is diminishing at a drastic rate relative to the increasing demand.

At year-end 1960, the year in which area rate regulation

began, the reserves-production ratio in the nation was 20.2; at year-end 1968 it was 14.6. During that pe-

riod, U. S. production of natural gas has increased at a rate in excess of 5 percent per year. Not only has the national reserves-production ratio fallen by nearly a point per year for five consecutive years, but the exploratory drilling nationwide has fallen off. In 1960, 866 productive gas exploratory wells were drilled in the United States; whereas in 1968, the number of such wells drilled was 430.[1] In 1968, the new supply of natural gas added in the United States (excluding Alaska) was only 12 trillion cubic feet, while production rose to 19.3 trillion cubic feet. For the first time, the production exceeded the supply of natural gas added.

The need for immediate action by the Commission has been voiced on numerous occasions since the issuance of Opinion No. 546 not only by the producers, but by representatives of all segments of the gas industry, including the American Gas Association, pipelines, distributors, and the Independent Natural Gas Association of America.[2] Further, during the prehearing conferences,

the same concern was again expressed by representatives of all segments of the industry plus the Commission's Staff (Tr. 24, 45, 62, 71-72, 204, 240, 253, 280). Concern as to the time it will take to reach either a litigated deci-

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[1] *American Association of Petroleum Geologists* data.

[2] See filings in connection with *Southern Louisiana Area Rate Proceeding:* letter dated December 16, 1968 to Lee C. White, Chairman, Federal Power Commission, from W. Morton Jacobs, President, American Gas Association; Motion Of The Pipeline Group For Further Oral Argument, dated November 22, 1968; Joinder Of Independent Natural Gas Association Of America In Motion Of Pipeline Group For Further Oral Argument, dated December 2, 1968; and Motion Of Consolidated Natural Gas System Companies For Limited Reopening Of The Southern Louisiana Area Rate Proceeding And For Other Action By The Commission, dated January 31, 1969.

sion or a settlement of the subject proceeding is empnasized by the fact that once an incentive program is instituted by the Commission, there will be a delay before the producers' exploratory program can be implemented. The amount of time associated with getting new production on stream in the offshore Southern Louisiana Area depends upon the point of development a producer has reached. The simple fact is, however, that it takes many years following acquisition of leases in the offshore area before producers can actually commence deliveries of gas. It is thus necessary that the Commission act immediately and avoid a prolonged hearing if new reserves are to be forthcoming to rectify the deteriorating supply situation. This is not the proceeding for regressive data collection systems or the testing ground for costing theories on a reservoir, lease or field basis.

B. *Movants' Evidentiary Presentation.*

The procedures and issues in this hearing must give reasonable effect to the purposes for which the proceeding was instituted. These purposes are stated in Opinion No. 546-A as (1) whether the third-vintage price established in Opinion No.

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546 should be modified; and (2) whether a fourth-vintage price should be established.[3]

In satisfying these purposes, the first principal inquiry which should be made is in the time dimension; that is, whether the third-vintage price established in

[3] For a comprehensive presentation of Movants' regulatory theories on rate making methodolgy, see the Supplemental Producer Brief On Regulatory Method filed by Continental Oil Company, *et al.*, with the Presiding Examiners in the *Hugoton-Anadarko* and *Texas Gulf Coast* area rate proceedings, Docket Nos. AR64-1, *et al.*, and AR64-2, *et al.*

Opinion No. 546, based primarily on 1960-1962 data, should be updated to reflect changes in the industry and the economy since that period. In other words, one cannot compare results for the offshore area with the results of Opinion No. 546 without making a comparable study on a current basis. The second principal inquiry is to ascertain what kind of hearing the Commission desires. Does the Commission desire to ascertain the answers to the questions stated in Opinion No. 546-A in a short hearing or a full-blown hearing? Movants would define a short hearing as being one requiring something less than a year from the commencement of data collection to the close of the record. Of course, the data collection procedure adopted will largely control the length of hearing and if a short hearing is desired, then the record must be based primarily on updated published information. On the other hand, if new theories of

cositng and cost allocation are to be explored as suggested by the Commission's Staff, then it must be recognized that a three to five year hearing is inevitable.

Taking the subject proceeding as it is currently constituted and assuming that a short or expeditious hearing as we have defined it is desired, the Movants propose the following program of evidentiary presentations which will adequately supplement the record already incorporated from Docket No. AR61-2. (Where data collection is necessary, the forms are set out in Exhibit No. 4 which we have requested be made part of the record.)[4]

[4] Exhibits referred to herein are those formally designated as "Prehearing Conference Exhibits." The following listing was presented at the prehearing conference, Tr. 199-204, and reflects our current evaluation of the evidence necessary to an expeditious disposition of this case.

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1. A "new" gas-well gas cost computation updated to reflect the latest information available on a national basis following the Commission decisions in Opinions Nos. 468 and 546. (Exhibit No. 4, Schedule No. 1)

2. An updated rate-of-return presentation.

3. A presentation of current published data on drilling activity and reserves additions, both nationally and by areas. The purpose of such evidence would be to form the basis for judgments on the gas supply which has been elicited under past economic and

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regulatory conditions.

4. Evidence on operations in the offshore environment.

5. Evidence concerning reserves in the Federal Domain not contracted to interstate pipelines. (Exhibit No. 4, Schedule No. 2). Because of the obvious confidential nature of such information, it will be provided only if such reporting is made to a public accounting firm which will compile the data and present the compilation for all parties' use. Individual company data will be subject to confidential Staff audits. We request that any Commission order dealing with the subject should so provide.

6. Evidence on the lead time preceding availability of new gas supplies in the area.

7. Evidence on the number of shut-in gas wells in the area and the reasons they are shut in. (Exhibit No. 4, Schedule No. 3).

8. Evidence by management representatives of producing companies on incentives required to provide increased gas supply.

The Pipeline Group has committed itself to present additional evidence which we also deem necessary for

the purposes of this proceeding. This evidence will center around (1) market requirements from the Southern Louisiana Area; and (2) deliverability from current reserves in that area.

Because the matter of gas supply is of such critical

importance, we ask the Commission to issue the necessary orders directing the completion of Movants' questionnaires. If the Commission will so limit the data collections, we would be ready to go to hearing with our evidentiary presentation outlined above within 90 days after the issuance of the requisite Commission directive. Indications are that the pipeline evidence mentioned would also be ready within that period. Further, what has been outlined above generally indicates how this proceeding should be formulated and how it can be completed in about one year or less.[5]

C. *The Supply Problem.*

1. A New Commission Supply Estimate Is Unnecessary.

Staff has proposed that in order to evaluate the supply of gas available from the offshore area, there is need for a detailed reserve questionnaire which would be the basis for a separate Commission determination. It is Movants' position that the instant proceeding was started by the Commission specifically to determine the appropriate regulatory response in light of the *existing* gas shortage and that no new gas supply studies are required. To overcome, however, some comments made in the past with

[5] Obviously, the Movants cannot now foresee all developments which may occur and so we cannot foreclose ourselves from presenting such other evidence as may be necessary to present our full case.

respect to supply presentations and to meet Staff's insistence in this case for more information, Movants will present additional supply data which can be utilized in conjunction with the data

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already in the Docket No. AR61-2 record and other published information. Nevertheless, an analysis based on a Commission sponsored questionnaire is under no circumstances necessary.

In assessing the supply issue in this proceeding, it must be kept in mind that supply is a national problem not confined merely to such measurements as the reserves to production ratio for Southern Louisiana. This is particularly true since the Southern Louisiana Area is considered by all parties to be the area from which will come much of the needed gas to help alleviate the national supply problem. Also, supply calculations are, at best, estimates, since precise quantification is impossible. (Demand projections, which must also be reviewed, extend into the future and are by necessity estimates depending upon varying assessments of events occurring in the past.) Thus, any attempt by the Commission to derive precise statistics on supply and demand would merely result in adding another estimate to valid and well-tested estimates already available.

The facts clearly show that regardless of whose estimate is accepted and after taking into full consideration the margin of error which is inherently present, the statistics overwhelmingly attest to the existence of a serious supply shortage requiring an immediate regulatory response to encourage more capital to flow to the development of gas supplies.

2. Supply Data In Earlier Area Rate Proceedings.

The data available to the Commission in prior area rate proceedings with respect to gas supply has been confined almost exclusively to published information. Various witnesses have, of course, testified as to varying projected percentage increases in demand; however, these percentages are derived from judgment being applied to past increases in natural gas consumption and general economic projections publicly available.

With respect to reserves figures, the Commission itself has consistently relied upon those computed by the American Gas Association (AGA) and published annually. In its *Permian Basin* decision, the Commission relied solely upon the AGA figures in its discussion of gas supply (34 FPC 183-85), as well as using this data to derive the denominator in its new gas-well gas costing technique (34 FPC at 197). The AGA figures were also those accepted by the Supreme Court as appropriate in testing the Commission's decision (390 U.S. at 816-17). In its *Southern Louisiana* decision, the Commission did not utilize any reserve estimates in its meager discussion of the supply issues, although it continued to rely upon AGA reserve figures in its new gas cost (40 FPC 566). In Opinion No. 546-A, however, Commissioner Carver's dissent relies upon AGA reserves figures and the Commission, at Slip Opinion, page 4, utilizes Form 15 reserve data to

show the growth in reserves dedicated to interstate pipeline companies from the offshore area.[6]

[6] All parties utilized AGA reserves data to some extent in their evidentiary presentations in Docket No. AR61-2. In addition, Staff witness Brammer presented through testimony and Exhibit No. 36 a reserve study based on data filed by pipeline companies in support of their certificate applications.

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In the *Hugoton-Anadarko* and *Texas Gulf Coast* area rate proceedings, both Presiding Examiners utilized AGA reserves data exclusively in their discussions of supply (HA, Ex. Dec., pp. 18-25; TGC, Ex. Dec., pp. 19-27) and reproduced certain AGA data as Appendix C to their respective decisions issued September 16, 1968. In the *Other Southwest Area Rate Proceeding*, Docket No. AR67-1, *et al.*, presently pending for decision before the Presiding Examiner, the parties again relied heavily upon AGA data and, in essence, updated the exhibits presented in the joint proceedings, Docket Nos. AR64-1 and AR64-2. In addition, Staff presented reserve data developed from pipeline certificate applications for the 1968 fiscal year (witness Guevara, Exhibit No. 95), together with an analysis of Form 15 pipeline data for the years 1963 through 1967 (witness Boynton, Exhibit No. 96).

The utilization of AGA reserves data by the Commission has been facilitated by the AGA's supplying to the Commission the reserves data broken down by FPC pricing areas. This was recently

done at the Commission's request with respect to Zones 2, 3 and 4, Offshore Louisiana. (See letters dated June 27, 1969 and August 5, 1969 from Mr. Ed Parkes, Chairman of American Gas Association Committee on Natural Gas Reserves to then Chairman Lee C. White of the Federal Power Commission.)

In summary, as far as reserves data are concerned, the Commission and the parties have relied in past area rate proceedings upon the data compiled by AGA as sup-

[6] All parties utilized AGA reserves data to some extent in their evidentiary presentations in Docket No. AR61-2. In addition, Staff witness Brammer presented through testimony and Exhibit No. 36 a reserve study based on data filed by pipeline companies in support of their certificate applications.

plemented in some instances by reserves reported in the pipelines' Form 15 reports and certificate applications. The AGA data has been specifically accepted and utilized by the U. S. Supreme Court when reviewing the Commission's *Permian Basin* decision. There is no precedent for the position taken by Staff in this proceeding which regards as inadequate both AGA and Form 15 reserves data. Staff's approach that a *de novo* development of reserves data through a questionnaire is required is tantamount to claiming the existence of Commission error in Docket No. AR61-2. Commission endorsement of Staff's position would require the reopening not only of the latter proceeding, but the records in Docket Nos. AR64-1 AR64-2, and AR67-1.

The existing record in Docket No. AR61-2, supplemented as we propose, will provide the Commission with the foundation upon which to make the requisite findings as to the adequacy of supply.

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D. *The Use Of Costs.*

One of the fundamental questions the Commission must decide is what type of cost data is to be collected and how costs will be used in determining if the rates set by Opinion No. 546 must be modified. The Movants' position is that the appropriate regulatory method utilizes relevant economic costs and non-cost factors rather than looking solely to cost estimates derived through artificial allocations. The Commission and the courts have held that it is permissible to use allocated unit cost estimates in the rate making process; however, because of their inherent imprecision, they must be given only nominal weight. And if costs are to be relied upon to some degree in ascertaining whether rates set in Opinion No. 546 are to be changed, weight must be given to existing precedent.

Motion by Texaco Inc., et al., for Oral Argument

The subject investigation involves the just and reasonable rate for sales of gas from Zones 2, 3 and 4 which were contracted subsequent to October 1, 1968. In Opinion No. 546, the Commission followed the precedent established in Opinion No. 468, wherein a dual or multiple pricing system was created. Under this pricing concept, the Commission used as the method for determining the cost of gas sold under contracts *prior* to January 1, 1961 an historical, *area* cost of service based upon information gathered through Commission-issued questionnaires. For sales contracted for *on or after*

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January 1, 1961, the Commission used a costing method based upon *nationwide* data from public sources. In the *Permian* case, the Commission rejected the area cost approach for purposes of determining cost for the post-January 1, 1961 gas ("new" gas). At 34 FPC 190 and 191, the Commission stated:

> "A preliminary question in determining the methodology of cost finding is whether costs are to be determined on an area or a national basis. As the examiner pointed out, the question is not whether a national price should be established but whether national or area costs should be used as the basic standard for fixing the future price of new gas-well gas in the Permian Basin. All parties agree that exploration and development operations are conducted by the industry on a national basis because it is impossible to isolate E&D by areas. *Without adopting all the reasons advanced by the examiner . . . we agree with the conclusion that the cost of new gas-well gas should be determined on a national basis.*" (Emphasis added)

Subsequently, in Opinion No. 546 when reviewing the method of determining the cost for "new" gas, the Com-

mission reaffirmed its decision in *Permian* and specifically rejected the Municipal Gas Distributors' contention that an area costing for "new" gas should be applied (40 FPC 557-58). The Commission stated:

> "National new gas costs (adjusted for local pressure base and production taxes) are important because the source of new gas supplies is now substantially national rather than regional in scope; that is, the Southwest, which includes Southern Louisiana, and which accounts for almost all of the nation's new gas, has become almost one vast common source of gas supply for the entire country." (40 FPC at 558)

Movants' Schedule No. 1 to Exhibit No. 4 provides a means by which the Commission can make an evidentiary record sufficient to satisfy the court-approved requirement of developing a "new" gas unit cost for rate design purposes. If this approach is adopted, the Commission will be able to use the record developed either as the basis of a litigated decision or a settlement.[7]

II.

RECOMMENDATION BY STAFF MUST BE REJECTED

The principal alternative to the Movants' proposal is Staff's recommendation to collect data and design rates on the basis of lease-by-lease unit costing, which includes reporting of lease-by-lease reserves.[8] Movants are un-

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[7] If the Commission expands the proceeding to include rate determinations applicable to *all* sales of gas from Southern Louisiana, the Movants will endeavor to expedite their evidentiary presentation required to adjust prices applicable to the "flowing" gas sales made under contracts *prior* to January 1, 1961.

[8] When referring to lease-by-lease data, this could include, under Staff's proposal, data collected on a reservoir, lease or field basis.

alterably opposed to such proposal for the following basic reasons (Tr. 204, *et seq.*):

1. As indicated above, unit cost estimates are inherently unreliable and inappropriate and at best may be given minimal weight when making rate determinations for independent producers. All the problems inherent in unit costing, on a national or area basis, are magnified on a lease basis.

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2. Lease-by-lease costing will give a result of an array of unit costs probably from 2¢ to $2.00 per Mcf and the final rate selected will still have to be the product of subjective judgment.

3. Lease-by-lease costing will lead to the longest, most detailed and bitterly contested area rate proceeding ever held. The length of hearing would be due both to the time required for reporting data and the detailed litigation such concept would require.

4. Most data on early expenditures in this area are not available due to a 10-year records retention policy by many producers. To illustrate, the letter to all parties by Mr. Leo Forquer dated June 27, 1969, provides production data on 37 non-associated and predominantly non-associated fields which are represented by Staff to have provided 70 percent of gas production in the Federal Domain in 1967. Of those 37 fields, 23 involved lease acquisitions prior to 1949 or 20 years ago. From this it is apparent that reporting of cumulative costs in this area is wholly impractical. Reporting of data on these fields will not be indicative of the incentive price required to bring forth third or fourth vintage gas.

5. Reporting of reserves and certain cost items on a lease-by-lease basis creates grave problems for the producing industry concerning disclosure of proprietary information.

6. To enter into a computation of unit costs on a lease-by-lease basis would be contrary to all Commission experience and precedent developed in 15 years of producer regulation.

A. The Commission's Order Instituting This Proceeding Does Not Require Lease-By-Lease Costing Or Data Collection.

The principal and overriding reason that lease-by-lease unit costing should not be an objective influencing data collection procedures is that it is wholly impractical. There are two points in the Commission's order of March 20, 1969, convening this proceeding which may have led to this Staff proposal. In that order, the Commission said at pages 4-5:

> "We believe that a further proceeding investigating the correlation between reserves found, including reserves not yet dedicated, and costs incurred in the offshore areas would be in the public interest."

It is obvious that this statement in and of itself does not require lease-by-lease costing. The new gas-well gas costing methods utilized by the Commission in Opinions Nos. 468 and 546 constitute a correlation of reserves and costs without any focus on lease-by-lease costs and reserves.

The Commission went on to state at page 6:

> "Production of much of the gas discovered, however, is in an early build-up stage. . . . For the purpose of determining the lag period between investment and production, and the unit costs incurred during the build-up period to full production, it would appear to be necessary to obtain hydrocarbon reserve, production, and cost data by leases."

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This is the only place in the order where lease-by-lease data was referred to and only with respect to determining the lag period between investment and production.[9] Further, the Commission's above-quoted statement may well be based on a false premise, i.e., that production in this area is in an early build-up stage. Referring again to the 37 fields covered by Mr. Forquer's letter of June 27, 1969, we point out that of the production from those 37 fields, 80 percent of the volumes came from fields where first production occurred 10 or more years ago. Information on year of first production and other data on these fields is available from the Bureau of Mines Information Circular 8408 entitled "Impact of Petroleum Development in the Gulf of Mexico."

B. Staff's Proposal Is Contrary To Commission And Judicial Holdings.

As a preface to a detailed analysis of why lease-by-lease unit costing should not be considered as a feasible alternative in this proceeding, the historical context of the Commission's experience with producer regulation should first be reviewed. All parties are familiar with the comments of the Commission in the *Second Phillips* rate case on the general problems of unit cost

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calculation. But that decision also contains the Commission's views on the use of reserves in costing, which are frequently overlooked. The Commission there stated:

[9] As will be discussed below, the United Distribution Companies have proposed a questionnaire, identified as Exhibit No. 7, whereunder lag time can be developed on a composited area basis with checks by Staff into individual company data pertaining to such.

> "Another difficulty in determining cost of gas per unit is presented by the necessity of using estimates of reserves of gas, which can never be precise and have been shown to be highly inaccurate in many cases, with qualified experts differing as much as 100 percent over reserves in the same formations." (24 FPC 544)

At another point, the Commission rejected the use of a reserves added realization allocation method (RAR) on several bases and stated:

> "Furthermore, RAR has a very serious administrative disadvantage in that it is very difficult to estimate the size of the gas and oil reserves of a producer. Experience has shown that experts differ substantially as to the size and deliverability of the reserves. Furthermore, the estimates are inherently subject to periodic change as a result of experience with the lease or field involved." (24 FPC 557)

The *Second Phillips* case was issued in 1960 but the Commission had grappled with the problems of single-field costing as early as 1958 and in the *West Edmond Field* case, rejected such costing as being impractical and not conducive to effective regulatory results (19 FPC 467).

The Commission again focused its attention on single-field costing in the *Socony Mobil High Island* case in 1962. There the Commission stated:

> "Finally, Socony presented historical cost evidence purporting to show a direct allocated unit cost of 30.79 cents per Mcf for this High Island gas alone. . . . In our judgment, it is not feasible to use the cost figures adduced by Socony in redetermining this case. The results of attempting to determine 'costs'

> for each field are too well known to bear extended discussion. . . . A system of regulation based on field-by-field cost studies would unduly depress prices in 'bonanza' fields—upon which the public heavily relies—and approve excessive prices for marginal production." (27 FPC 348)

Finally, in the *Alfred C. Glassell* settlement decision, the Commission refused to remand the proceeding for further cost data, stating: "Since these data would concern only single field operations they would magnify the difficulties of single company cost-of-service computations" (30 FPC 1332).

In the two area rate cases which it has decided, the Commission has defended the legality of area rate making and of its cost computations. In *Permian*, the Commission defended the area regulatory theory, stating:

> "An individual producer may find only dry holes or marginal wells or his search for gas may result in finding a huge new gas field. A price fixed by his individual cost experience could thus either be too high for consumers in relation to other available supplies or too low to be fair to the producer, considering his risks. However, on a group basis, costs and rates can be developed which will be fair to all concerned." (34 FPC 179)

As every party is aware, each lease or unit has but a single operator. The result of the Staff proposal to collect data

for lease-by-lease costing is obviously a regression, not just to the individual-company costing condemned by the Commission in the above quotation, but a regression to individual-field costing. Similarly, as stated above when discussing our views as to the use of costs, to focus on

lease-by-lease costs is completely contrary to the Commission's *Permian* and *Southern Louisiana* decisions wherein it used national costs for its "new" gas rate determinations.[10]

C. Lease-By-Lease Costing Will Result In A Three To Five Year Proceeding.

Turning from Commission precedents, we would next point to the time involved in the Staff's lease-by-lease costing concept based upon questionnaires identified as Exhibit Nos. 1, 2 and 3. Staff's concept of gathering data on numerous leases covering hundreds of reservoirs for the purpose of developing a proliferation of unit cost figures will inevitably result in a prolonged hearing. Because Staff's proposal requires reporting voluminous data, parts of which are very confidential, collection of such data may well involve hearings before the Bureau of the Budget, further hearings precedent to an order by the Commission

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and, finally, appeals to the courts before the preparation of the questionnaire could even commence. If and when this is accomplished, there will then have to be (1) filling out and filing with the Commission of the data;[11] (2) compilation of the information for distribution to the parties by Staff; (3) attempts to analyze and evaluate such information by parties for use in their direct cases; (4) tedious and complicated cross-examination and investigations into the use of the data and con-

[10] The proposed Staff questionnaire has the further obvious deficiency in that it gives no consideration to the fact that production from the offshore Southern Louisiana Area must bear its fair share of unsuccessful national exploration and development costs.

[11] It has been estimated that it would take from six to nine months to complete and fill out Staff's questionnaires (Tr. 225).

cepts used in preparing cases based upon fitting together and matching the costs and reserves related to the multitude of leases and reservoirs; (5) preparation of lengthy briefs for an Examiner; (6) Examiner's decision rendered; (7) filing of Briefs on Exceptions; and (8) the rendering of a Commission decision. Three to five years may have elapsed at this point and judicial review will not have begun. Our statements at this point in time are necessarily general, but we referred above to the 10 fields of the 37 in Mr. Forquer's June 27, 1969 letter which produced the largest volumes in 1967. Those 10 fields were reported in the Form 15 reports to have included 432 separate reservoirs, many of which have not yet produced. It is obvious that any attempt to match

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costs with such a vast number of reservoirs would be an interminable process.[12]

D. The Collection Of Lease-By-Lease Data Would Not Lead To A Useable Result.

Turning from the time problem, let us assume that all lease-by-lease data desired by Staff were collected and assume that unit costs lease-by-lease were calculated with a 2¢ to $2.00 per Mcf range. What does the Commission do with such a range to determine whether the third-vintage price should be raised and whether a fourth-vintage price should be established? Such information would be absolutely useless in view of the following facts (Tr. 215, *et seq.*):

[12] Staff has proposed that a "Summary Questionnaire," identified as Exhibit No. 2, be filed within 30 days and a "Basic Questionnaire," identified as Exhibit No. 1, be filed in 90 days. Staff's Summary Questionnaire has the same inherent problems of the Basic Questionnaire since it is also based on lease-by-lease reporting, and has the further deficiency of requiring the filing of only a limited portion of total expenditures.

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1. The last large lease sale in this area was in June, 1967 where the industry paid out $510 million in bonuses. The leases purchased then were delivering little, if any, gas to interstate pipelines at year-end 1968.

2. The properties purchased by the industry in that 1967 sale, as of August 6, 1969, have had only 17 gas wells completed upon them.

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3. Of the 37 fields listed in Mr. Forquer's letter, only 7 involve a first lease taken after 1960.

4. Of the 37 fields, the single field with the largest production shown for 1967 and the single field with the largest cumulative production, which are different fields, involved a first lease taken in 1946—almost a quarter of a century ago.

No one can seriously argue that the result of lease-by-lease costing in this area in light of the above facts can be indicative of the incentive price required to assure future supply adequacy.

E. Staff's Proposal Concerning Collection Of Reserve Data Would Result In The Unnecessary Disclosure Of Confidential Information.

Schedule No. 7 to Staff's proposed Basic Cost Questionnaire, identified as Exhibit No. 1, and its Reserve Questionnaire, identified as Exhibit No. 3, call for the reporting of gas reserves data on a lease-by-lease and reservoir-by-reservoir basis.[13] The purpose of collecting the

[13] Staff has recommended that the lease-by-lease reserve information in Schedule No. 7 be reported in 90 days. The Reserve Questionnaire, which constitutes the back-up material for Schedule No. 7, would not be reported immediately but would be filed at a later date if so requested by Staff (Tr. 179-180).

data would be to correlate lease-by-lease reserves with lease-by-lease costs. For the reasons set forth heretofore, it is perfectly clear that the

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Commission cannot obtain meaningful lease-by-lease costs whether the denominator or reserve component of that cost is based on producer-reported lease-by-lease reserves or on the Form 15 reserves reported by the pipelins on a rlatively small property unit basis such as a field.[14]

Aside from the uselessness of reporting lease-by-lease costs and reserves, the reporting of lease-by-lease reserves would call for public disclosure by the producers of information that is wholly proprietary and confidential in character. In order that the Commission may fully understand the specific confidential nature of the data referred to, we will attempt to describe it in further detail and illustrate the irreparable harm which would follow from public disclosure of such data.

Information on producer operations in the Federal Domain offshore Louisiana is particularly confidential because of the

[14] If, as the Commission observed, this hearing area is in the "build-up" period, all costs required to match discovered but undeveloped reserves obviously have not yet been incurred. Any calculated unit costs using such incomplete expenditures with completely reported reserves would be grossly understated. Any projection of costs to match up with reserves that may ultimately be developed runs afoul of Commission refusals to accept such projections. Thus, in Commission Opinion No. 403 involving Tennessee Gas, the Commission noted the uncertainties of predicting the market value of oil and condensate in future years, of forecasting royalty expense and of predicting depletion and amortization and return and income taxes. *Tennessee Gas Transmission*, 30 FPC 759, 766 (1963).

existence of extensive unleased acreage in the area. Companies have spent millions of dollars in acquiring information pertaining to this area and on the basis of such data will evaluate the bids they will make in seeking to acquire additional acreage in the area.

This data is composed basically of two forms. First is the raw data acquired by producer efforts in geophysical exploration and in tests made while drilling wells. This raw information is acquired at great expense and constitutes an asset of the particular company just as much as refineries, buildings or cash in the bank are assets of the company. As such, the management of the particular company has an obligation to the stockholders to avoid dissipation of such asset.

The second fundamental type of data involved is that which involves the interpretation of the raw data into information such as reserve estimates, producing capacity estimates, geological structure maps and information on the extent of productive acreage. To translate the raw data into such information requires a variety of interpretative techniques to be exercised by the companies. These interpretative techniques reflect the cumulation of many years experience by the company and extensive research into methods of interpretation. In many search and development

efforts carried on by companies in other industries. Public disclosure of such interpretative techniques is analogous to violating patent infringement laws or other types of trade secret protection afforded to other industries. To require the public disclosure of such R&D-type information could only have the effect of discouraging the

oil industry from its continuous efforts to improve its interpretative techniques in the interest of creating greater efficiencies of operation.

The Commission's order instituting this proceeding states as one regulatory purpose the desire "to encourage a continued active program of exploration in the area." This purpose would be defeated by the anti-competitive effects of public disclosure of confidential data of the types referred to above. It is obvious that failure to protect such data from public disclosure would be clearly contrary to the purpose of Congress in requiring offshore leasing to the highest bidder. [43 U.S.C.A. § 1513(a)]

Accordingly, the Commission should enter its order that individual company confidential data will be presented in the open hearing only in composite form. Any inspection of such individual company data should be only by the Commission's Staff and then only in the manner and to the extent and within specific limitations prescribed by the Commission after notice and hearing accorded for that specific purpose.

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The necessity for such protective order is enhanced in this case by the following considerations. We think that we have established the futility of obtaining either cost or reserves data on a lease-by-lease basis. On an area basis, acquisition of individual company confidential information is clearly unnecessary in light of the availability to all parties of area-wide reserves information from both the AGA and the pipeline Form 15 reports. In addition, the issue of supply adequacy in this area may be fully answered by reference to those two existing public data sources in conjunction with the undedicated reserves questionnaire proposed by the producers. These sources will permit the Commission to make the ultimate

findings required by the issues in this case, which it has defined as seeking to ascertain whether the third-vintage price should be raised or a fourth-vintage price established.

III.

THE RECOMMENDATIONS BY THE UNITED DISTRIBUTION COMPANIES

The United Distribution Companies (UDC) have recommended that the subject proceeding be handled as expeditiously as possible in view of the imminent supply shortage which will drastically affect the operation of the companies involved in their group. To this aim, this group has proposed that two

questionnaires be filled out by respondents as an alternative to the Staff questionnaire which UDC bitterly opposes (Tr. 242). The first questionnaire proposed by UDC, which is identified as Exhibit No. 6, was designed so as to use the form of the cost questionnaire proposed by Staff, less company reserve data,[15] but put on a sub-area basis where each company would report composited costs for all of Zones 2, 3 and 4 (Tr. 235). Thus, it follows the concept used when the Commission required the filing of the 1962 All Area Questionnaire. This information would then permit the parties to estimate unit costs for the total sub-area of Zones 2, 3 and 4, similar to those utilized by the Commission in Opinion No. 546 for "flowing" and "new" gas, as well as variations thereof. Since the data are required for all years since 1959, it can also be used to show any build-up in offshore in-

[15] The sub-area costs would be compared with the sub-area reserves reported for Zones 2, 3 and 4 by the AGA and those found in the Pipeline Form 15 Reports (Tr. 236).

vestment as well as different types of trends (Tr. 235-36).

The second proposal by UDC pertains to a questionnaire by which data would be collected in order for the parties to develop a sub-area composite unit cost based upon the "discounted cash flow" methodology (Exhibit No. 7).[16] In addition to being

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the foundation for various discounted cash flow studies, the data from this questionnaire can be also used (1) to develop the lag time for this offshore area; (2) show the build up in various cost components by years for the industry as a whole; and (3) compile studies as to depletion periods for gas found in this sub-area (Tr. 239).

Although the proposals by UDC have inherent the fundamental fallacy of using sub-area costs, it must be recognized that if the Commission determines that cost information is to be collected with reference to Zones 2, 3 and 4, UDC's proposals are clearly preferable to those presented by Staff whereunder more complex, time consuming and controversial data and methodology would be applied.

Aside from the fact that UDC can claim support for the gathering of costs on an area basis on the ground that this was done in the *Permian* and other area rate cases, whereas Staff has no precedent for its proposal, UDC's proposal is more favorable since the data required can be collected substantially quicker than Staff's. In order to explain this time-saving point, an analysis of the reporting problems involved in Staff's lease-by-lease proposal is required (Tr. 222, *et seq.*).

[16] UDC's position is that this latter data will be reported on an industry composite basis and will *not* be open for public inspection other than Staff checks (Tr. 239).

The basic problem with Staff's lease-by-lease questionnaires involves two points. One is annual reporting over the

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full life of the particular properties and the other is the reporting on small property units, *e.g.*, a lease. Most producer record keeping today reflects the use of third-generation electronic data processing systems utilizing the most capable computer equipment available and these systems change with amazing rapidity, reflecting the pace of improved technology in both hardware and software systems. (On the average, data handling systems in recent years have become obsolescent within a short 18-month period.) Thus, by going back to expenditures incurred in the mid-1940's, the data requested span accounting systems from hand-reporting to today's incredibly complex electronic data processing systems.

Not only have accounting mechanics changed over this quarter of a century, but structural changes in record keeping have occurred several times over the period. Thus the various producing companies break down their organizations into geographic areas called regions, divisions, districts, area, and so forth. Over the years these subdivisions are changed, consolidated, combined, separated, and recombined. In order to accumulate year-by-year data, it is necessary to tediously hand-check each year to assure year-to-year comparability of reporting. In many cases, this will be done by people who have never even seen, much less worked with, such old records. It is obvious that a perfectly qualified accountant with 10 years' experience in the companies

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may never have seen the records maintained in the '40s and '50s. The problem, of course, is compounded by the

commonly followed 10-year record-retention policy of the companies. It would seem apparent that the larger the geographic area (*e.g.*, all of Zones 2, 3 and 4) for which reporting can be made, the less troublesome are these structural changes in the record keeping methods.

Another aspect of producer record keeping which makes area-wide reporting far more feasible and less time consuming is, as it may be called, the inverted pyramid analogy. By this it is meant that lease data are combined into field data which is then combined into districts, and so on, into regions or divisions. For many companies, offshore operations correspond to a district or sub-district. For this reason, data required for area-wide reporting is quickly available from existing records. It emphatically does not have to be built up from lease-by-lease records. Further, many facilities serve the entire offshore environment, such as marine terminals, helicopters, and so forth. Area-wide reporting allows reporting on those facilities as a whole rather than tedious allocation of the use of these facilities to individual leases.

These are some of the reasons that area-wide reporting for recent years is possible in a period of about 90 days while lease-by-lease reporting for the full life of the properties

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would require six to nine months, or even more in many instances.

IV.

CONCLUSION

The Commission, for the reasons heretofore explained, is requested to adopt the Movants' foregoing recommendations as to the issues and data collection procedures.

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[Caption Omitted]

STAFF RESPONSE IN OPPOSITION TO STATEMENT OF POSITION BY MOVANTS ON ISSUES AND PROCEDURES ACCOMPANYING MOTION BY TEXACO INC., *ET AL.*, FOR ORAL ARGUMENT

On September 5, 1969, Texaco for itself and twenty-one other independent producers filed a motion for oral argument in the above docket numbers.[1] Staff neither supports nor opposes requests for oral argument; however, we take issue with many of the contentions expressed in Texaco's *Statement of Position by Movant on Issues and Procedures* and with the recommendations contained therein. (Hereinafter referred to as Statement of Position or Texaco.)

I. IF ACCEPTED, TEXACO'S ARGUMENTS AND FACTUAL STATEMENTS JUSTIFY TERMINATION OF DOCKET NO. AR69-1

The instituting of the *Offshore Southern Louisiana Area Rate Proceeding* had two predicates. The first is that offshore

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Louisiana Zones 2, 3 and 4 can be anticipated to be a potentially important source of future gas supply. The second is that, because the area is in a "build-up" stage of reserves discoveries and production, a separate investigation of offshore costs is warranted to guide the Commission in establishing rate ceilings for third and fourth vintage gas, if offshore costs associated

[1] A motion for oral argument in Docket Nos. AR69-1 and RI69-753 was also filed by the United Distribution Companies (UDC) on September 4, 1969.

with anticipated suplies should vary significantly from national norms. See generally, "Order Instituting Investigation and Proposed Rule-Making," *Area Rate Proceeding (Offshore Southern Louisiana Federal Domain and Disputed Areas)*, Docket No. AR69-1, March 20, 1969, hereinafter cited as *Order Instituting Investigation and Proposed Rule-Making.*[2]

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[2] Specifically, the Commission stated: "We observed in Opinion No. 546 that 'certain input costs are higher in deep offshore waters than elsewhere' but that 'Gas Reserves data have not been satisfactorily correlated, however, with such costs' (mimeo, p. 130). We similarly acknowledged the unsatisfactory status of available data on time lags * * * We believe that a further proceeding investigating the correlation between reserves found, including reserves not yet dedicated, and costs incurred in the offshore area would be in the public interest." *Order Instituting Investigation and Proposed Rule-Making, supra*, pp. 4-5 of slip opinion. Presumptively, the Commission's statements both in the order instituting this proceeding and in the *Southern Louisiana Area Rate* decision itself were responsive to producer claims that costs for offshore production were high and thus deserving of special consideration. For example, see statements of producer counsel on oral argument in that proceeding:

> "The declining rewards with increased depth and the considerably higher costs of operating in the marshy and water environment are well documented in the record * * *. The Southern Louisiana Area has most unique problems with very costly and risky drilling environments, both onshore and especially offshore, plus the exposure to the extraordinary losses due to recurring storms and hurricanes." *Area Rate Proceeding (Southern Louisiana Area)*, Docket No. AR61-2, 292/34088:16-24 (McCorkle).

> "This record abounds with evidence which establishes the general nature of the offshore deep water environment, the higher cost, the more numerous and higher hazards, and the greater risks. * * * There is evidence in this record by such men as Mr. Pedersen * * * and Dr. Atwater * * * which indicates clearly that as we get into the deeper and deeper waters farther and farther offshore our risks, our hazards and our costs will go up considerably." *Supra*, 34214:9-34215:18.

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If respondents are correct, that the AR69-1 hearing area is not unique, then there is no reason for the Commission to consider modifying the rate ceiling aplicable to Zones 2, 3 and 4 or to continue this hearing. In fact, respondents go so far as claiming that this Commission's statement that "it would appear to be necessary to obtain hydrocarbon reserve, production, and cost data by leases" *(Order Instituting Investigation and Proposed Rule-Making, supra,* p. 6) "may well be based on a false premise, *i.e.*, the statement that production is in an early build-up stage * * * [because] 80 percent of the volumes [in the area's 37 producing

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gas-well and predominantly gas-well fields] came from fields where first production occurred 10 or more years ago." *Statement of Position,* p. 15, 16-17 at 17. *Accord, Area Rate Proceeding (Offshore Louisiana Area),* 5/207: 12-25. Thus, respondents admit a considerable amount of costs from the Federal Domain were included in data underlying Opinion No. 546 ordered rates. In view of the contentions of possible uniqueness of offshore Louisiana costs combined with the possibility of inadequate cost and reserves information, with the aid of the parties the Commision staff has prepared cost and reserves questionnaires capable of providing the Commission and parties with such information. Exhibits 1-3.

While resisting supplying the information requested as "proprietary" among other things, the producers reiterate their arguments that FPC allowed price ceilings are inadequate. However, they do not now claim that prices in the AR69-1 hearing area are too low because of any uniqueness of that area. Rather they argue that (1) on

a national basis the generally determined price ceilings are too low and (2) there is a general inadequacy of supply. They resist either suplying cost data specifically directed to this area or that there should be a subarea rate.

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Rather, they seek general reopening of area rate hearings and expansion of this proceeding. *Joint Petition of Phillips Petroleum Company and Other Indicated Independent Producers for Order Instituting and Reopening Area Rate Proceedings*, Docket Nos. RI69-753 (March 9, 1969); compare AR69-1, 5/201:1-7. The producers have apparently abandoned their position of cost uniqueness of the offshore area.[3] They even question the pre-

[3] Producer insistence that they ought not to have to furnish data which in any way correlates cost expenditures with their related reserves findings except based upon areawide components and their apparent abandonment of the claim that the offshore area is unique may rest on indications that, if anything, the offshore area may well have lower than average costs. Indications are that the productivity of reserves found per foot drilled are more than 2300 Mcf compared with the national productivity figure of 587 Mcf per foot drilled utilized in Opinion No. 546. *Area Rate Proceeding (Southern Louisiana Area)*, 40 FPC 530, 567, 568 (1968). The Role of Petroleum and Natural Gas from the Outer Continental Shelf in the National Supply of Petroleum and Natural Gas prepared for the U.S. Department of the Interior by Foster Associates, Inc., Section II, p. 35; see World Oil Magazine, p. 82, July 1968. Indications also are that a greater proportionate amount of liquids are produced from the offshore area than would be indicated by the national average. See *Area Rate Proceeding (Southern Louisiana Area)*, *supra*, 40 FPC at 564. The Louisiana Conservation Commission Reports for 1967 indicates a condensate-gas ratio of about 17 Bbls per MMcf compared with an implicit national 11.5 ratio found by the Commission in Opinion No. 546. See *Area Rate Proceeding (Southern Louisiana Area)*, *supra* 40 FPC at 564.

With productivity over 3 times the national average and a larger net liquid credit, the subarea could absorb far higher drilling and lease acquisition costs without there being any unit cost increase. Compare *Order Instituting Investigation and Proposed Rule-Making*, Docket No. AR69-1, *supra*, at pp. 4-5 of slip opinion.

mise that the offshore area is in a "build-up" stage of production. *Statement of Position*, p. 17.[4]

The inevitable conclusion is that, while the Commission has given respondents an opportunity to prove that there is justification for departing from Opinion No. 546 ceilings for production from future acquired offshore leases, the industry has abandoned the claim that it can do so. If the producers are desirous of making an evidentiary showing that costs of producing gas are higher than national in Zones 2, 3 and 4, they should be given opportunity to do so. Should they not desire to present such evidence, Docket No. AR69-1 should be terminated.[5]

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[4] Producer arguments of production stability are apparently made to justify their not reporting data to match expenditures with reserves findings or to normalize costs. However the rapid production growth in the area belies this claim. See p. 14, n. 1.

[5] Motions to this effect have been made as a result of producer statements during oral argument. *Area Rate Proceeding (Offshore Southern Louisiana Area)*, 5/273:4-13, and see 5/266:19-277:12. Termination of Docket No. AR69-1 on grounds that offshore costs are not claimed to be unique does not foreclose respondents from attempting to show, since the issuance of Opinion No. 546, that costs have generally changed. However, the pricing of gas of all vintages, but especially of new vintages, above cost would allow for some cost increases without necessarily justifying price changes. Shell argues costs have changed in its motion in Docket No. RI70-73. *Joint Petition to Waive or Lift the Limitation on Rate Change Filings*, July 15, 1969. However, apparently here too the producers no not attempt to prove their position from company cost data. See "Staff Answers to Petition to Waive or Lift the Limitation on Rate Change Filings, *Area Rate Proceeding (Southern Louisiana Area)*, Docket No. R170-73, August 15, 1969. To the extent that producer claims merely challenge Opinion No. 546, just recently decided, they should be rejected. See *Panhandle Eastern Pipeline Co.* v. *F.P.C.*, 236 F. 2d 606 (CA3, 1966).

Staff Response in Opposition to Statement

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II. APPROVAL OF THE STAFF DATA REQUEST IS ESSENTIAL, IF THE COMMISSION DESIRES AN ACCURATE REPRESENTATION OF COSTS IN THE AR69-1 HEARING AREA

The issue with regard to data collection in Docket No. AR69-1 comes to whether the Commission wants to know gas producing costs in the hearing area. The main producer proposal would update national costs based upon generally available published data. The UDC proposals would provide areawide composites. Exhibit No. 6, the basic UDC proposal, is formulated to prevent direct identification of cost inputs and related reserves findings. Thus, the Commission would be presented with a mixture of costs from fully producing fields and from partially developed and undeveloped ones. Since reserves to be matched against these costs would also be aggregated, there would be no way either to attempt to develop a typical cost—or an area aggregate cost—for those fields in full production. Nor would there be any way to compare the cost experience from developed fields with cost trends for more recent property acquisitions. Absent a meaningful way to go behind the figures, because of the amounts of undeveloped or semideveloped acreage in the area,[6] the limitations of such data composites are especially pronounced. Neither the Commission nor the parties (except the producers who control the information) can judge whether reported lease

[11,321]

acquisition, drilling, or other costs and reported reserves reasonably reflect a match. Unless there is provided

[6] See *Statement of Position*, p. 22.

means to determine the amount of reserves attributable to partially develop properties and to examine the pattern of reporting reserves as properties are developed, no meaningful result can be reached or judgment made from that result.

Especially in this area, predictably issues of the proper depletion period for applicable investment and time lag will continue to raise disputed issues. Without tracing of costs to property units, it is impossible to test against actual experience the depletion period used or the time lag allowed. UDC attempts to remedy this through a pre-composited DCF study (Exhibit No. 7), but this too suffers from the above infirmities of denying parties access to basic evidentiary data. Its use would lock parties into a given cost result by shielding them from basic data sources.[7]

[11,322]

The extreme reluctance of respondents to present meaningful cost data is doubly unfortunate. The area affords the parties the opportunity to provide information of direct costs without relying on published data composites or allocations. Despite respondents' claims of burden, there are only approximately 37 gas-well gas and predominantly gas-well gas fields in Zones 2, 3 and 4. Louisiana Department of Conservation *1967 Annual Oil and*

[7] The probitive value of this proposed study would not be saved by allowing staff checks, since presumably staff could only check the data submissions to the accounting firm which UDC proposes to collect the data. There would be no access to data classifications and allocations originally made by the reporting companies. Moreover, we object to any procedure which denies parties other than staff access to basic evidentiary data necessary for them to protect their interests. *Ohio Bell Telephone Co.* v. *P.U.C. of Ohio*, 301 U.S. 292 (1937). See *Office of Communication of the United Church of Christ* v. *F.C.C.*, —— F. 2d —— (CADC, No. 19409, June 20, 1969).

Gas Report. However, these fields account for far greater production than that which was used to base the area cost findings in *Permian.* Thus, the detailed reporting burden to obtain meaningful costs is relatively slight. Docket No. AR69-1, 1/37:18-38:9; 5/183:18-185:7.

III. RESPONDENTS' OBJECTIONS TO THE STAFF PROPOSED COST QUESTIONNAIRES LACK MERIT

Respondents make three classes of objections to the ordering of staff proposed questionnaires: they object to rate regulation based upon unit costs, such as those which can be derived from staff questionnaires; (2) they object that the staff data request will result in an overly long hearing and (3) they claim that they have a right to avoid disclosure of the type of cost and reserves data requested by staff. Such claims in total are predicated upon a rejection of cost based rate regulation.

[11,323]

A. *The Producers Attack On Supplying Basic Cost Data Threatens the Integrity of the Regulatory Process*

The producers complain that unit cost estimates are "inherently unreliable and inappropriate and at best must be given minimal weight when making rate determinations * * *", AR69-1, 5/205:1-7; *Statement of Position,* p. 5. Their position is that a supply "crisis" proves that prices ought to be raised; in substance they claim that the purpose of data gathering is not to allow parties to test facts, but rather to provide "a means by which the Commission can make an evidentiary record sufficient to satisfy the court-approved requirement of developing a 'new' gas unit cost for rate design purposes." *Statement of Position,* p. 14.

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Staff Response in Opposition to Statement

The Texaco statement of position must be examined in light of movants' position that data collection is merely to serve the purpose of raising prices assumed to be justified on other grounds.[8] Even if they are correct in their general contention that rate ceilings ought to be raised, these are arguments addressed to the merits and do not justify foreclosing other parties, the Commission and the Commission staff from examining their cost and suply data. Thus, movants appear to be addressing themselves to substantive issues, not to issues of data collection.

[11,324]

Texaco argues against any data collection which will allow parties or the Commission to examine costs in more than a summary fashion. Such examination is claimed unnecessary or too time consuming since parties will be able to reach independent conclusions and litigate them. Movants may be correct in their gamble that, if they can prevent anything but the collection of broad data composites, they can justify a rate increase which will be sustained by this Commission and by the courts. However, such limited data collection, designed to reach a particular substantive result, more likely will work against needed rate stability by preventing settlement agreements or Commission decisions, which parties can feel are justified by underlying cost data.

The integrity of conclusions reached from summary records are protected and supported by access to back-up data. In attempting to shield this Commission from basic

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[8] Compare the following: "It is Movant's position that the instant proceeding was started by the Commission to determine the appropriate regulatory response in light of the *existing* gas shortage and that no new supply studies are necessary." *Statement of position*, p. 8.

data sources, the producers threaten the integrity of the regulatory process. Additional rates may be justified as they claim, but the amounts of allowed rate increases above cost should not be hidden by the closing of basic cost records to Commission view.

[11,325]

B. *Texaco's Claims that Cost Estimates Have Proven Unreliable Demonstrate the Need for Investigating Costs on a Property Unit Basis*

It emphatically is not and has not been staff's position to set a different *price* for the varying leases in the offshore area. Nor have we even contended for "lease by lease" costing, even though such costing is clearly sanctioned by Commission order. *Order Instituting Investigation and Proposed Rule-Making*, Docket No. AR69-1, supra, pp. 4-5, 6. What we have contended is that for the Commission to meaningfully test costs in the offshore area it is necessary to compare cost incurrences with related findings of gas. Therefore, we have designed a cost questionnaire to report costs based upon the property unit most readily utilized by respondents in aggregating such costs which may or may not be a lease depending upon the cost item involved and the decision of the producer as to the level at which the company records the item of information. Costs may be reported on an aggregate basis as high as a field. But reporting in aggregates at less than a total area level is necessary for parties to separate cost incurrences on developed properties from those on semi-developed or undeveloped properties. Furthermore, unless cost data is broken down to some mean-group around a

mean or whether costs are affected by the date of acquisition or development of properties, water depth or other common characteristics. Contrary to the implications of Texaco, *et al.*, staff would of course aggregate properties in an attempt to get a representative costing sample. However, *because* it does not request data *already* aggregated, staff's proposed questionnaires allow parties to select cost samples or rate design proposals which they believe to be valid rather than forcing substantive results on the parties through the form of data collection.[9]

Thus, when Texaco complains that costs from various property units would be unrepresentative of future costs, it is ironic that under staff's proposed questionnaire Texaco could select a cost sample which excludes such allegedly unrepresentative properties. Acceptance of composited cost data proposed by Texaco would prohibit such analysis.

Second, Texaco echoes the constantly reiterated producer theme that costs and therefore cost based regulation are "inherently unreliable," *Statement of Position*, p. 14. To the extent such statements are based upon variances between published data sources or differences among proferred allocation

methods the necessity for ordering staff's data requests is demonstrated. Yet, movants embrace costing for this proceeding based upon published data or the UDC composites that they themselves would subsequently

[9] The cases cited on pp. 17-19 of Texaco's *Statement of Position* are not opposed. They illustrate commission concern against using an unrepresentative cost sample.

attack. If the producers oft iterated contentions are correct that, compared with alternatives, the sources on which the Commission relies for new gas costing lead to erroneous results, the way for them to demonstrate this is from their company records. In fact, it is apparent that the awareness that regulation depends upon published data sources will cause such sources to be increasingly subject to attack that the data contained therein were not collected in the normal course of business and are therefore suspect. Ultimately, company records provide the means to test claims of inaccurate costing or to resolve questions between conflicting data series. Yet Texaco resists the opportunity to provide the means whereby it can attempt to demonstrate the merits of its substantive complaints against Commission cost findings.

The staff cost questionnaires request costs incurred for offshore development as recorded by the producers. Most of the major cost items such as lease acquisition and drilling costs, in addition to some cost items which have been previously dealt with in aggregate, such as development dry hole expense,

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can be directly assigned to property units. Thus, completion of the staff proposed cost questionnaires would go far to meeting producer objections of the unreliability of costing and would allow the producers to attempt to demonstrate that their claims should be given credence. it is the producers, and not the staff, who would mask the development of cost data and force the use of statistical data series or allocations which the producers attack.

The fact that the offshore Louisiana area is in a developmental stage, as found by the Commission in the

order instituting Docket No. AR69-1, further necessitates adoption of our cost questionnaires.[10] Additions to reserves are reported as

[11,329]

properties are developed, but after considerable expenditures, such as lease acquisition costs, have already been incurred. The extent to which the patterns of reporting reserves precedes or follows development expenditures must be determined to assure a proper match between cost inputs and related findings. Since new gas costing covers expenditures on a national basis, differences in the timing of reporting costs and reserve findings may balance out. However, such distortions cannot be ig-

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[10] As we have discussed earlier (*supra*, p. 5), Texaco claims the Commission may have been in error in stating that production from the AR69-1 hearing area is in a build-up stage. This is based upon the allegation that of the producing gas and predominantly gas-well gas fields in the area 80 percent of production volumes come from fields where first production occurred more than ten years ago. *Statement of Position*, p. 10. See also pp. 22-23.

The history of recent growth in production as well as the agreed upon potenital of the offshore area convinces us that the Commission correctly categorized it as being in a build-up stage. Based upon data in the Form 15 reports for available reported fields between 1963, the first year for which data is available, and 1968, production increased on reported Zone 2, 3 and 4 properties from 266,691 MMcf to 486,525 MMcf or 182 percent. AGA reports that total non-associated gas reserves for the same period increased from 8,631,488 MMcf to 18,985,992 MMcf or 220 percent.

American Gas Association Committee on Gas Reserves, Letter from Ed Parkes, Chairman, to Lee C. White, Chairman, Federal Power Commission, August 6, 1969. The State of Louisiana Gas Production and Proration Order (June 23, 1969) indicates that there are 58 blocks in Zones 2, 3 and 4 having only shut-in gas wells. 1968 data indicate that there are 569 shut-in producible gas zones in the area. U.S. Department of Interior Geological Survey, Conservation Division, *Mineral Production, Royalty Income and Related Statistics on Oil, Gas and Other Leaseable Minerals, Federal and Indian Lands* (1968).

nored in a discrete area known to be in a developmental stage. The combining of data for unknown amounts of developed and undeveloped properties and for aggregate reserves increments cannot aid cost analysis for the Offshore area.

An illustration of the problem can be found in Texaco's statements that those fields with the greatest current or cumulative production (i.e., those most fully developed) are rela-

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tively old and that most production comes from fields 10 or more years old. *Statement of Position*, pp. 23, 17. Yet there has been a 182% increase in production between 1963 and 1968. *Supra*, p. 14, n. 1. According to the Bureau of Mines *Information Circular 8408* (cited by Texaco at p. 17 of its Motion), 17 of the producing fields in the area began production 1960 or later. An additional four recently discovered properties are reported as shut-in. Moreover, Texaco states that there has not yet been significant gas development of leases purchased in the June, 1967 $510 million lease sale.

Thus, by movants own statement, as is to be anticipated, there is significant production from properties acquired in the past, while at the same time more recently acquired properties are less developed. As we have stated, staff's proposed questionnaires will provide means to obtain reliable cost samples either of fully developed or of more recent, but, perhaps, partially developed properties. However, grave distortions may result from use of composites. If major reporting of reserves from new field discoveries or from additions and extensions occur after significant development, costs will be shown as incurred without matching reserves, even though subsequent production will turn out to be low cost. In an expanding

area the problem is magnified. But respondents would give us no way to match cost incurrence with reserves findings to determine whether the two properly correlated.

[11,331]

Finally the collection of the proposed staff cost questionnaires is demanded by needs for maintaining administrative integrity. The simple fact is that data can be checked and analyzed only if presented in a form which allows investigation of the figures from which cost totals are derived. It is not merely a question of misreporting which is involved, but one of analysis. The attempt to precomposite data is an attempt to give totals which are in practical terms difficult if not impossible to check, and thereby to deny the basic information necessary to regulate.

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C. *Allegations That The Staff Proposed Questionnaires Are Overly Time Consuming Are Ill-Founded.*

The producers contend that adoption of staff's questionnaires "will result in a three to five year proceeding". *Statement of Position*, p. 20. However, analysis of the producers' position shows that most of the time estimated by them to result from the ordering of our data requests comes from the fact that they state they will litigate both the ordering and potential uses which the parties might make of the data. We do not dispute parties' rights to litigate. But it is clear bootstrapping for a party to justify not acquiring cost data because he will litigate its collection and then to claim that such litigation will unjustly delay implementation of the substantive goals he seeks. Expedition is essential to regulation. It

is doubtful, however, that real time saving in settlement or litigation will result from attempting to deny parties data they need to make their claims.

The producers also complain that the data requested by staff is burdensome (1) because it is difficult to report in non-composited form and (2) because many of the parties to

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this proceeding do not retain applicable cost records over the lives of the properties.

To the extent possible within the context of providing verifiable cost data the Commission staff made every effort to accommodate producer objections to our proposed questionnaires. In addition to having sent field teams to investigate the record keeping practices of two major companies, since the institution of this proceeding we have participated in 18 meetings or informal conferences with various parties or data collection committees. We have been in almost continuous contact with the various parties since the first pre-hearing conference. As a result of these meetings, we have made many substantive and procedural modifications to our proposed questionnaires to meet respondents' objections to them. (5/169:16-176:21). We do feel we have a responsibility to realistically accommodate our data requests to factors of time and reporting burden and have made every attempt to do so. But we should not endorse the compositing of data in such a way to prevent investigation of movants' evidentiary claims.

It stretches credibility for movants' to claim they do not have cost data on properties as prolific and as costly as

the offshore area in anything less than area composites. Data from subsidiary records must be used to develop aggregate totals. As stated previously staff has consistently taken the position that companies may report costs on a field, lease, or any other property unit basis consistent with their particular records. This allows parties to report on as high a level as the field. Considering that there are only approximately 37 producing gas-well or predominantly gas-well fields on which detailed reporting is requested the difficulty in completing staff's proposed questionnaires is exaggerated. Further, companies can vary their reporting basis among cost items or can aggregate costs for years before which records are currently available. Thus, it is not that we are demanding the impossible; rather, assuming the correctness of the claim of impossibility of reporting some costs, we refuse to accept that this justifies total non-reporting of cost or reserves data by property unit.

The claim that the ordering of staff's proposed questionnaires will unduly delay the proceeding ought to be considered in light of our suggested short questionnaire which would have a short reporting period for those costs which are readily obtainable and directly assignable to producing fileds of leases.

Such costs would be taken from continually maintained, financial accounting type, annual company records and books. (Exhibit No. 2, 5/175:6-18). This would allow parties to formulate substantive positions for settlement negotiations or to prepare hearing exhibits based upon direct investment costs without waiting for full data

reporting. Such summary data could, of course, be supplemented by more detailed reporting. The producers also find themselves unable to report such data. They further object to the reporting of depletion, depreciation and amortization schedules (Exhibit No. 1, Sch. 5), which would be readily available, and which would serve as a check on investment data, on grounds of confidentiality. The net effect is that, while claiming impossibility or time delay, they refuse to make *any* data reporting which could be used to check area composite figures.

The Commission should measure Texaco's claims against the time which it took to report other questionnaires which movants favored. The producers managed to complete the producer sponsored "Auten-Davis Questionnaire" in less than two months from the date that data request was made.[11] Full cost data was there

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requested for past as well as for anticipated expenditures. Data were timed by years. Workpapers underlying the questionnaire contained data for each of 85 fields compared with our request for data for 37 producing gas fields.[12] It is difficult to see why the Auten-Davis Questionnaire could be completed within two months, but our questionnaire cannot be completed in three. Moreover, the data requested on the UDC discounted cash flow study contains various allocations and

[11] This questionnaire was requested on February 12, 1965 and submitted on April 1, 1965, *Area Rate Proceeding, (Southern Louisiana Area)*, Docket No. AR61-2.

[12] In addition to these fields limited data would be requested for an estimated possibly equal number of non-producing, but proven, gas fields. However, such data would clearly be recent in time and mainly readily obtainable investment data.

cost projections. Yet the producers estimate that these could be made within 3 months. *Statement of Position*, pp. 31-32. (AR69-1, 5/225:9-12, 240:3-5). Given the limited number of fields for which full reported data is requested, plus the various reporting options on our questionnaires, it is reasonable that our proposed questionnaire could be completed within a similar time.[13]

D. *Staff Has Attempted To Maintain The Confidentiality of Movants' Reserves Data to the Extent Possible.*

Movants' interest in maintaining cost and reserves data confidential to the point of preventing parties from

testing their claims allegedly justifying higher rates has no justifiable basis. However, to the extent it is possible to maintain the confidentiality of their reserves data within the context of regulation, our proposals attempt to do so. For example, we do not propose that they report backup reserve information except insofar as it becomes specifically necessary to test their claims. Otherwise, we have proposed to rely upon Form 15 reserves data as a test of the data reported on Schedule 7 (relating to reserves reporting) of the cost questionnaire.[14]

[13] It is instructive that producer time estimates to complete questionnaires have not changed, even though their scope has been drastically reduced. (AR69-1, 5/169:16-172:4).

[14] Considering that such reserves are for the most part publicly reported by the pipelines' "Form 15" reports, we have difficulty understanding the "confidentiality" claim. In conferences, the producers have implied that they may disagree with the sworn reserves estimates reported to the Commission and that the Commission should not rely upon them for costing purposes, yet at the same time they resist presentation of possible factual basis for such claims.

AR69-1, 5/179:13-181:9 Furthermore, we attempted to reach agreement to further limit reserves reporting and rely primarily upon Form 15 reports. AR69-1, 5/173:2-176:21 Such agreement was rejected by respondents in Docket No. AR69-1. We

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have limited our data requests to avoid reporting of reserves underlying other than gas leases and have remained amenable to have reserves information confidentially reported to the extent that could be done so while maintaining the rights of parties to investigate producer claims.

IV. THE UNITED DISTRIBUTION COMPANIES QUESTIONNAIRES OUGHT NOT TO BE ORDERED.

Texaco surfacely attacks the UDC proposed questionnaires, but in effect endorses them. Regardless, the UDC questionnaires ought not be ordered. Substantive use of conclusions reached from proposed Exhibit No. 7 (the "D.C.F. Study") would be directly violative of parties' rights to cross-examine conclusions and to their rights to due process of law. Exhibit No. 6, the UDC basic cost questionnaire presents a related problem. While unlike Exhibit No. 7, data reported would be available to all parties, apparently it is contemplated that workpapers

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See AR69-1, 5/216:4-10. Regardless, we have always been prepared to support confidential reserves reporting to us or to a private accounting firm provided that the data could be checked and utilized as necessary for costing and provided that rights were reserved in case of dispute.

would be available only to staff.[15] However, even staff would not have direct access to and the ability to use

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underlying lease or similar records. Thus, as a practical matter considering time and manpower limitations, there would be no way to check the derivation of reported costs. This we think intolerable. While we would not oppose any reasonable data request, and while we would not oppose the reporting of Exhibit No. 6 supplemental to staff's proposed exhibits, we cannot support the ordering of a questionnaire whose purpose is and effect would be to prevent a meaningful investigation of the basic cost data necessary for cost determination. The following aditional difficulties are contained in UDC proposed Exhibit No. 6: (1) To our knowledge there is no way to investigate the extent of the depletion period of capital investment or of time lag from data to be reported. (2) It may force atypically high unit costs results. Gross additions of non-associated reserves in zones 2, 3 and 4 from 1964 through 1968 are twice as high as those additions were from 1959-1963. American Gas Association Committee on Gas Reserves, letter from Ed Parker, Chairman, to Lee C. White, Chairman, Federal Power Commission, August 6, 1969. Since the questionnaire does not attempt to correlate reserve additions with costing units, there can be no meaningful investigation of whether the two are

[15] It is not completely clear what data could or could not be checked on the U.D.C. questionnaires and to what extent it is contemplated that data differences could be made public. See *Statement of Position*, p. 26, n. 16. AR69-1, 5/239:18-29. However, the thrust of the U.D.C. producer position clearly is that recording of field, lease or any other property unit costs shall be revealed.

properly correlated. (3) Instructions may permit a double reporting of certain costs, such as drilling equipment and production equipment, although this defect presumably can be remedied. (4) Drilling cost data is not reported stratified by well depth and by type of wells. (5) Because of the summary reporting, there is no way to check directly assigned dry holes to non-associated gas properties. (6) For the same reason lease acquisition costs relating to release or abandoned acreage cannot be identified. Additionally, unsuccessful or not yet productive lease costs cannot be tested against actual expense, although this information may be publicly available. (7) The one year reporting of liquid revenue may show an atypical liquid credit. (8) Reported production data for one year and in summary will not allow adjustments to normalize production. (9) The necessity to adjust exploration and development costs to allow for reserves findings in excess of production may lead to incorrect cost results.

V. THE PRODUCERS' ARGUMENTS WITH REGARD TO AN ALLEGED SUPPLY "CRISIS" DO NOT JUSTIFY ACCEPTANCE OF THEIR REFUSAL TO SUPPLY THIS COMMISSION WITH MEANINGFUL DATA REPORTING.

The allegations of gas supply shortage ought to be and

are being taken seriously.[16] But the key to supply re-

[16] However, to paraphrase Mr. Twain, the patients' reports of their own deaths may be exaggerated. See "National Gas Shortage Sparks Activity Off Louisiana Coast", *Offshore Magazine*, September, 1969, and "Payout Odds Climbing for Costly 1967 Gulf Leases," *Oil and Gas Journal*, p. 33 (September 8, 1969).

mains the amount of reserves found for a given amount of effort. Furthermore, assuming that gas supply is price responsive (otherwise increased rates are meaningless), the costs of production must be known if the Commission is to judge the necessary price to elicit needed gas supplies. Thus, the refusal of respondents to supply meaningful gas reserves information itself prevents granting the relief they seek.

The claim that gas shortage justifies increased rates is not new. Absent demonstration of reserves availability and of the necessary price to elicit additional supply, those parties claiming the need for higher prices leave the Commission no way to guage either the validity of such claims or the amount of the justified increase, if any. *Atlantic Refining Co.* v. *P.S.C. of New York*, 360 U.S. 378 (1959).[17]

Respectfully submitted,

/s/ Robert A. Jablon
ROBERT A. JABLON
Commission Staff Counsel

Washington, D.C.
September 15, 1969

Copies to all parties on
Secretary's Service Lists

[17] It is noteworthy, that the Catco leases whose certification was claimed to be justified based on a claim that demand for gas sanctioned uncritical acceptance of producer price proposals are here involved.

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[Caption Omitted]

ORDER ENLARGING INVESTIGATION AND PROPOSED RULEMAKING

(Issued December 15, 1969)

On March 20, 1969, the Commission issued an order in Docket No. AR69-1 initiating an investigation and rulemaking proceeding for the purpose of determining whether the just and reasonable area ceiling rates prescribed in Opinion Nos. 546 and 546-A which are applicable to sales of third vintage gas-well gas produced from the Federal Domain and disputed area offshore Southern Louisiana should be raised. We also stated that it was our purpose to determine whether any such increased ceilings should be made applicable to sales of third vintage gas-well gas being made subject to refund pursuant to increased rate filings authorized by Opinion No. 546-A and whether fourth vintage area ceiling rates should be established applicable to sales of gas-well gas from the area encompassed in this proceeding. Pursuant to our order, conferences were held before Examiner Martin E. Rendelman on July 8, 30, and 31 and August 13 and 14, 1969,[1]

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at which the parties attempted to reach agreement with respect to the data to be furnished. As reported by the Examiner agreement could not be reached and he therefore referred the matter to the Commission for resolution.

[1] During the periods between the above dates approximately eighteen informal conferences also were held among the juries.

The parties have filed a large number of petitions, motions and replies in the captioned dockets. Some of the petitions sought expansion of the new proceeding; others looked for relief from certain of the rate restrictions effected by the decision in Docket No. AR61-2. Because the various filings were so interrelated that any resolution thereof necessarily would affect the scope and objectives of the proceedings in Docket No. AR69-1, the dockets bearing on these issues were consolidated for the purpose of oral argument, which was held before the Commission on October 24, 1969. The Commission has given close attention to the pre-hearing conference record in AR69-1, the various pleadings referred to above, the answers thereto, and the statements made at the oral argument. Based on our study of the foregoing, we have concluded that the public interest will best be served if the proceeding in Docket No. AR69-1 is enlarged to include the entire geographical area of Southern Louisiana, onshore as well as offshore, and to provide for a review of the just and reasonable rates for all vintages of gas produced therefrom.

Insofar as the requests for a nationwide proceeding are concerned, we reject the suggestion at this time. With the exception of the Permian Basin, there is presently pending a proceeding for each of the major producing areas. We think that institution of second-round proceedings in these areas, whether individually or on a collective basis, should await resolution of all the pending cases. With respect to the Permian Basin, we are sympathetic with the views expressed by a number of parties that a review of Permian rates should be undertaken at the earliest possible time; we are giving this matter careful consideration.

We believe that a sufficient showing has been made, on the present record, to justify a review of the ceiling rates

for first and second vintage gas produced in Southern Louisiana. But a sufficient showing has not yet been made

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to warrant an immediate change in the moratorium provisions of Opinion No. 546, as amended in Opinion No. 546-A. The issue of the continued effectiveness of the moratorium will remain open, however, pending further developments in this proceeding, and may be given further consideration herein.

Phasing of Hearings

The expanded AR69-1 proceeding should be handled in two separate phases. Phase I will be confined to a review of the just and reasonable rates for non-associated gas discovered and produced in Southern Louisiana and contracted on or after October 1, 1968.[2]

This phase of the proceeding should include evidence with respect to the adequacy of gas supply and adequacy of service to consumers, the demand for gas, the cause of a gas shortage, if any, the effect of price on gas supply and demand, and other relevant economic evidence, together with data as to the current, nationwide cost of finding and producing non-associated gas. Data should also be included which are adequate to determine the current cost of finding and producing non-associated gas in the Federal Domain.

Phase II will be confined to a review of the just and reasonable rates for first and second vintage gas in Southern Louisiana. We recognize that Phase II will in-

[2] Including those contracts dated prior to October 1, 1968, which under the special relief granted by Opinion 546-A are treated as having been executed on or after October 1, 1968.

volve complex issues concerning both costing and regulatory methodology. It would appear, however, that data of the character previously utilized for costing of flowing gas, when coupled with the data adduced in Phase I of the proceeding, together with pertinent trend data, may provide a basis for the review of rates for first and second vintage gas. These matters should be explored at the prehearing conference and the necessary data obtained promptly.

[11,363]

Data Requirements

The parties to the prehearing conference previously held in AR69-1 were unable to reach agreement on the issue of the collection of data. We now proceed to a resolution of the disputed matters.

In view of our determination that the rates involved in this proceeding should be reviewed in phases, the following specific data will be required, in addition to the supply and demand evidence and other relevant data.

Phase I

(a) Published data used in determining the nationwide current cost of non-associated gas, supplemented by such data to be furnished by the major respondents as were developed by questionnaire data in Docket No. AR61-2.

(b) Data necessary to determine the current cost of new non-associated gas in the Southern Louisiana area, the data to be reported on a company-wide composite basis for the area. Producers operating both on and offshore shall report their data in such a manner as to allow the separate identification of costs incurred in

the Federal Domain and disputed area. Data shall be reported by all original AR69-1 respondents. Small producers operating only in onshore Southern Louisiana may report their data but will not be required to complete the questionnaire.

(c) Producer data as to volumes of reserves in the offshore area not contracted to interstate pipelines and data on status of shut-in gas wells.

(d) Updated drilling cost data to be furnished by the producers.

(e) Supply and deliverability data to be furnished by the pipelines.

[11,364]

Phase II

Composite cost data of the major respondents in the Southern Louisiana area.

In the interest of expediting the proceeding we believe that data gathering should not be phased. This is not to say that the Examiner, in the exercise of his judgment, may not allow the parties additional time within which to submit certain of the cost information, where warranted.

Procedure

We shall order a prehearing conference herein to take place on Tuesday, January 27, 1970.

The staff is directed to serve on all of the parties at least two weeks prior to the prehearing conference, a draft of a questionnaire or questionnaires which it considers adequate to meet the cost and operating data requirements of this order, together with a suggested pre-

hearing order incorporating proposed stipulations and schedules. We anticipate that out of this conference will come substantial agreement on data requests, and an appropriate schedule for hearings. We desire to have this proceeding expedited in every way possible. We direct the Examiner to rule on data request issues at the earliest possible date, to issue necessary questionnaires quickly, and to provide for their prompt completion. The Examiner should provide for the introduction of direct evidence by all parties, including interveners and staff, on issues such as adequacy of supply, deliverability, demand forecasts and so forth, indeed all evidence which does not depend on the reported cost data, at an early date, and should also provide for rebuttal thereto. The Examiner should further set target dates for the serving of direct cost evidence, rebuttal thereto and the commencement of formal hearings.

The Commission finds:

It is necessary and appropriate for purposes of carrying out the provisions of the Natural Gas Act, particularly but not in limitation of the foregoing, Sections 5, 8, 10, 14 and

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16 thereof, that the investigation and proposed rulemaking heretofore instituted in Docket No. AR69-1 be enlarged to encompass the entire Southern Louisiana area and all vintages of gas produced therefrom, in order to determine whether the just and reasonable rates prescribed in Opinion Nos. 546 and 546-A should be modified and whether fourth vintage area rate ceilings should be established applicable to gas sales from the area made under contracts dated on or after the final order in this proceeding.

Order Enlarging Investigation and Proposed Rulemaking

The Commission orders:

(A) The investigation and proposed rulemaking heretofore instituted in Docket No. AR69-1 is hereby enlarged to encompass that portion of the State of Louisiana lying south of the 31° parallel, and including all areas, both State and Federal, in the Gulf of Mexico off the shore of Louisiana, and to encompass all vintages of gas produced therefrom.

(B) All producers who have rate schedules on file with the Commission for gas sales in Southern Louisiana who were not previously made respondents in Docket No. AR69-1 are listed in Appendix A, and are hereby made respondents in this proceeding.

(C) A conference will be held on Tuesday, January 27, 1970, in a hearing room of the Federal Power Commission, 441 G Street, N.W., Washington, D.C., commencing at 10:00 a.m. (EST), between respondents, interveners, and Commission staff concerning the issues and procedures to be followed herein. The Chief Examiner or an Examiner designated by him, shall preside at the conference hereby called. The staff is hereby directed to serve on all of the parties at least two weeks prior to the prehearing conference, a draft of a questionnaire or questionnaires which it considers adequate to meet the cost and operating data requirements of this order, together with a suggested prehearing order incorporating proposed stipulations and schedules.

(D) Any person desiring to intervene in this proceeding, not previously having intervened or otherwise made a party hereto, may, within 30 days of the date of issuance of this order, file a petition to intervene or notice of intervention as provided by Section 1.8 of the Rules of Practice and Procedure.

[11,366]

(E) The Secretary shall cause a copy of this order to be published in the FEDERAL REGISTER and served upon each of the respondents to this proceeding and upon interested State Commissions as is provided for in Section 1.19 of the Commission's Rules of Practice and Procedure.

By the Commission.

GORDON M. GRANT
Secretary

[SEAL]

[11,367]

APPENDIX A

Additional Respondents

Aladdin Petroleum Corporation
Aladdin Producing Co. Inc.
Alco Oil and Gas Corporation
American Natural Gas Producing Co.
American Petrofina Co. of Texas
American Well Service and Salvage Inc. and Annco Petroleum Corp.
Anadarko Production Company
An-Son Corporation
Apache Corporation [1]
Aquitaine Oil Corporation
Arnold, Agnes Cullen
Arnold, Isaac
Ashland Oil and Refining Company
Associated Oil and Gas Explor. Inc.
Azar, Dr. Paul J.
Aztec Oil and Gas Company
Ballard and Cordell Corporation
Barnwell Production Company
Bass, Perry R.
Bass, Perry R., Incorporated
Bateman, Earl G. d/b/a Bateman Drilling Company
Beck Oil Company
Bel Oil Corporation
Belco Petroleum Corporation
Bintliff, David C.
Birthright Oil Company
Bluebonet Gas Corporation
Bradco Oil and Gas Company
Bradco Properties Incorporated
Browder, Charles D., Jr.
Brown, George R.
Arnold H. Bruner and Company
William T. Burton Industries Inc.
CRA Incorporated
F. A. Callery Incorporated
Callery Properties Incorporated
Carter, Reese E.
Cenard Oil and Gas Company
Central Equipment Rentals, Inc.
Chance, R. L., Sr.
Circle Drilling Company Inc.
Cities Service Company
Clinton Oil Company
Coastal States Gas Prod. Co.
Cocke, W. H.
Cockrell, E., Jr.
Cole, Howard S., Jr.
Conover, William V.
Continental Inter-State Gas Co.
Cordell, J. H.
Couba Oil Company
Courtney, E. A.
Cox, Edwin L.
Crow David Trustee
Crown Central Petroleum Corp.
Cunningham, James M.
Cyprus Oil Company
Dalton, W. F. Trustee
Damson Exploration Corp.
Damson Exploration Corp., Hutcheson, L. B. and Dirks, Wayne D. d/b/a Solatex Petroleum Co.
Davis Oil Company
Del Oil and Gas Corporation
Delta Drilling Company
Delta Gulf Drilling Company
Despot Incorporated

[1] Successor to Zapata Offshore Company.

Despot, George J.
Diamond Shamrock Corporation
Diversa Incorporated
Dixon Management Corporation
Dorn and Miller Company
Dow Chemical Company

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Drew Petroleum Incorporated
Eason Oil Company
Edgewater Oil Company Inc.
El Tres Petroleum Corporation
Elsbury, Jos W., Jr.
Exchange Oil Company Limited
Exchange Oil and Gas Company
Falcon Seaboard Drilling Company
Fidelity Oil and Royalty Company
Fikes, Leland
Frankel Oil and Gas Company
Franks, John
Franks Petroleum Incorporated
Freeport Oil Company
Gas Gathering Corporation
Gilger, C. C.
Glasscock Chahmam Incorporated
Glassell, Alfred C., Jr.
Goodrich, H. R.
Goodrich, Hugh
Goodrich, R. H.
Great American Minerals Company
Great Southern Oil and Gas Co. Inc.
Great Yellowstone Corporation
Grigsby, Jack W.
Gruy Management Service Company
H-Tex Incorporated
Halbouty, Michel T.
Harang, Jack F. and Johnson, Joseph A.
Harbor Oil Company Incorporated
Hawkins, H. L.
Hawkins, H. L. and H. L., Jr.
Hawthorne, Hugh A.
Helis Petroleum Corporation
Helis, William G., Estate of
Henderson, J. Harry, Jr.
Herrington, Mrs. Louise H.
Hester, B. M.
Hibbert, R. E., Agent
Highland Resources Incorporated [2]
Homa Oil and Gas Company
Homer, Joseph F. and Homer, Grace
Hubbard, R. E., Jr.
J. M. Huber Corporation
Hudson, E. J.
Hudson Gas and Oil Corp.
Roy M. Huffington Inc.
Hunt, H. L.
Hassie Hunt Trust
Hunt Industries
Hunt, Lamar
Hunt, Lyda-Bunder Trusts
Hunt, Lyda-Caroline Trusts
Hunt, Lyda-Herbert Trusts
Hunt, Lyda-Lamar Trusts
Hunt, Lyda-Margaret Trusts
Hunt, William Herbert Trust
Hurley Oil and Gas
Hurt Oil and Gas Corporation
Jameson, F. E.
Johnston, Jack M.
Jones, Joseph M.
Kaplyn, T. Harry
Kellerman, R. E.
Kilroy Properties Inc.
King, A. P., Jr.

[2] Successor to Highland Oil Company.

King Resources Company
Kleinpeter, T. W.
Jack E. Koch Oil Co. Inc.
LaCoastal Petroleum Corp.
Lake Washington Inc.
Lameson and Bennett Inc.
Landa Oil Company
Langton, Claude M. Trustee
Lawrence Oil Incorporated
Levy, Nathan A., Jr.
Lyons and Logan
Lyons, C. H., Sr.
Lyons Petroleum
M.P.S. Production Co. Inc.

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McCain, M. F.
McCarter, W. B., Jr.
McCord, Charles T., Jr.
d/b/a McCord Oil Company
McCormick, Sanford E.
McGhee, George C.
McIntyre, T. J.
McIntyre, T. J.
d/b/a McIntyre Oil Company
McKnight, William L.
d/b/a LaGorce Oil Company
McLean, Harvey
McMoran Properties Incorporated
McWilliams-Moffett Corporation
Magna Oil Corporation
Main, Vernon J., Jr.
Marr, M. H.
Mayfield, M. L.
Mayronne, R. W., Jr.
d/b/a Riverside Oil Company
Mecom, John W.
Midwest Oil Corporation
Miller, Irwin
Mitchell, George and Assoc. Inc.
Moore, Homer T.
Mosbacher, Robert
Nesbitt, William J.
Newsham, John Chauncey
Nichlos Oil and Gas Company
North Central Oil Corporation
O'Meara, M. P.
O'Meara, Robert W.
Occidental Petroleum Corporation
Offshore Exploration Corporation
Ogden, Roger H. and Schneider, George W., Jr.
Oil and Gas Futures Inc. Texas
Oil and Gas Property Mgmt. Inc.
Owen, J. P.
Pano Tech Exploration Corp.
Peltier, Harvey
Pel-Tex Petroleum Co. Inc.
Penton, Ruth I. and Penton, D. N. d/b/a Penton and Penton
Petroleum Gas Producing Co.
Petroleum Incorporated
Pioneer Oil and Gas Co. Inc.
Plaguemines Oil and Gas Co.
Prentice, Robert B.
Procter, Sterrett B.
Pubco Petroleum Corporation
Rebstock and Reeves Drilling Co.
Robichaux, D. J., Jr.
Rowe, David A.
Royalite Oil Company Inc.
Rutherford, P. R.
Rycade Oil Corporation
Sabinol Corporation
Sands, Caroline Hunt
Secure Trusts
Sheldon, Joseph S., Jr.
Singer-Fleischaker Oil Co.
Sklar Producing Company Inc.
South Shore Oil and Devel. Co.
South Texas Natural Gas Gath. Co.
Southdown Burmah Oil Company

[11,369]

Order Enlarging Investigation and Proposed Rulemaking

Southdown Incorporated
Southeastern Public Service Co.
Southern Minerals Corporation
South Natural Gas Company
Joint Venture
Southland Royalty Company
Southwest Gas Prod. Co. Inc.
State Exploration Company
Strautberg, A. T.
Stokes, Winston L.
Sword Company
Tex-Star Oil and Gas Corp.
Texas City Refining Inc.
Texas Crude Oil Company
Texas Crude Oil Incorporated
Texas Gulf Sulfur Company
Texas Oil and Gas Corp.
Texas Petroleum Gas Company

[11,370]

Texstar Corporation, The
Thompson, Craft
Toce, Paul M.
J. C. Trahan Drilling Cont. Inc.
Transocean Oil Incorporated[3]
Tribune Oil Corporation
Trice Production Company
U.S. Oil of Louisiana Ltd.
Valley Gas Transmission Inc.
Viking Oil Corporation
Vincent and Welch Incorporated
WSC Corporation
W. W. F. Oil Corporation
Walker, Weir
Walker, Willard E.
Walker, W. E. and
Meeker Jr. (Operators)
Warren American Oil Company
Weaver, Curt
Webster, C. B.
Weiner, Ted
Whipple, W. J. N. and Stall, A. H. Incorporated
Whitaker, Douglas
Whitestone Petroleum Corp.
Wigwam Production Corp.
Williams Brothers Company
J. E. Williams Incorporated
Wilson Exploration Company
Woodfin, Gene M. Trustee
Woods Oil and Gas Company
Woods Petroleum Corp.
Wrightsman, Charles B.
Marshall R. Young Oil Co.

[3] Successor to J. Ray McDermott and Company, Incorporated.

[11,371]

[Caption Omitted]

ERRATUM NOTICE

(January 15, 1970)

ORDER ENLARGING INVESTIGATION AND PROPOSED RULEMAKING

(Issued December 15, 1969)

APPENDIX "A", page 4, strike "U.S. Oil of Louisiana Ltd." and substitute "U.S. Oil of Louisiana Inc."

GORDON M. GRANT
Secretary

[11,439]

[Caption Omitted]

ORDER DENYING MOTION, AMENDING ORDER ENLARGING INVESTIGATION AND PROPOSED RULEMAKING, AND PROVIDING FOR WAIVER OF SECTION 1.17(b) OF THE COMMISSION'S RULES OF PRACTICE AND PROCEDURE

(Issued February 4, 1970)

On December 24, 1969, Valley Gas Transmission, Inc., a natural gas pipeline company, filed a motion to be deleted as a respondent to the enlarged proceeding in Docket No. AR69-1 on the ground that ordering paragraph (B) of the order enlarging this proceeding, issued December 15, 1969, served only to include additional producer respondents. Ordering clause (B) inadvertently referred to producer respondents while it was our intention that all natural-gas companies operating in Southern Louisiana who were not previously made respondents by the order of March 20, 1969 instituting this proceeding, should be made respondents to the enlarged proceeding. We will therefore amend our order of December 15, 1969 to so provide. Since Valley Gas Transmission, Inc. is a natural gas company operating in Southern Louisiana, its motion to be deleted as a respondent will be denied.

As in prior area rate proceedings we think it is in the public interest to waive Section 1.17(b) of the Commission's Rules of Practice and Procedure with respect to service of copies of documents in this proceeding. We will therefore provide that each party who desires to be served with copies of filings made by other parties to this proceeding shall so notify the Secretary.

[11,440]

The Commission finds:

(1) It is appropriate and in the public interest to amend the Commission's order of December 15, 1969 enlarging this proceeding, as hereinafter ordered.

(2) It is appropriate and in the public interest that the Commission waive the provisions of Section 1.17(b) of the Commission's Rules of Practice and Procedure with respect to service of documents in this proceeding to the extent hereinafter ordered.

The Commisison orders:

(A) Ordering paragraph (B) of the Commission's order of December 15, 1969 enlarging the investigation and proposed rulemaking in Docket No. AR69-1, is hereby amended to read as follows: "(B) All natural-gas companies operating in Southern Louisiana who were not previously made respondents in Docket No. AR69-1 are listed in Appendix A, and are hereby made respondents to this proceeding."

(B) The motion of Valley Gas Transmission, Inc. is hereby denied.

(C) All Parties to this proceeding desiring to receive copies of filings made herein by other parties shall, on or before March 1, 1970, so notify the Secretary of the Commission by filing an original and three copies of a notice naming one specific representative to be served. The Secretary shall then prepare an official service list for use by all parties to this proceeding.

By the Commission.

GORDON M. GRANT
Secretary

[SEAL]

[11,441]

[Caption Omitted]

ORDER DENYING APPLICATION FOR REHEARING AND RECONSIDERATION

(Issued February 13, 1970)

On January 14, 1970, Hunt Oil Company, *et al.*, filed an application herein for rehearing and reconsideration of the Commission's order of December 15, 1969, enlarging this proceeding. Hunt contends that the Commission erred in refusing to modify the Southern Louisiana rate change moratoria imposed in Opinion No. 546 with respect to first and second vintage gas. The principal basis of Hunt's request for modification of the moratoria was its assertion that it was improper to allocate flowing gas joint production costs by use of relative cost ratios developed from nationwide single product oil and gas legs that include production from the Hugoton-Anadarko Area.

The specific data relied on by Hunt was not before the Commission when it decided Opinion Nos. 546 and 546-A. Nevertheless, similar evidence and a comparable argument were presented to the Commission in that case and it was determined that the allocation ratios should be developed on the basis of the largest available sample. It was also found that the alternative of using area gas only leases plus gas condensate leases without lease separation there proposed by the producers would result in a lower cost determination. The use of nationwide oil and gas legs was approved. (Opinion No. 546, 40 FPC at 598-599, 806-809). That determination is one of the subjects being reviewed by the United States Court of Appeals for the Fifth Circuit on appeal of Opinion Nos. 546 and 546-A.

[11,442]

While Hunt in its current petition again presented extensive arguments concerning the alleged impropriety of the use of national oil and gas legs (arguments which were basically rejected in Opinion No. 546), it has not shown that the ratios developed after exclusion of the Hugoton-Anadarko area would be more appropriate than either full national legs or area legs including condensate leases. In these circumstances, Hunt has not made a showing adequate to lift the moratoria at this time. Nevertheless, the appropriate allocation ratio is an issue to be resolved in Docket No. AR69-1.

Based on the foregoing, the application for rehearing or reconsideration should be denied.

The Commission orders:

The application for rehearing and reconsideration filed by Hunt Oil Company, *et al.*, is denied.

By the Commission.

GORDON M. GRANT
Secretary

[SEAL]

[11,443]

[Caption Omitted]

ORDER DENYING MOTION FOR MODIFICATION AND CLARIFICATION

(Issued February 18, 1970)

On January 16, 1970, the Public Service Commission of the State of New York filed a motion requesting modification and clarification of the Commission's order of December 15, 1969, herein.[1] With the two exceptions hereinafter noted, New York essentially requests the Commission to specify in detail the evidence required by the order of December 15 or to order specific evidence to be submitted. The order of December 15 outlined certain issues which the Commission desired to be explored in this proceeding and set forth certain basic data which it desired. The determination of the evidence to be presented must be made by the parties subject to the rulings of the Presiding Examiner. It is not desirable to prescribe the required evidence or to circumscribe the rights of the parties in developing the issues.

New York requests the consolidation in this proceeding of Docket No. R-338, a rulemaking proceeding involving the cost of transportation of gas and liquefiable hydrocarbons by pipeline purchasers. While it is important that Docket No. R-338 be concluded in an expeditious manner, its consolidation with this proceeding would unduly complicate the issues and would not be in the public interest.

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[1] Responses were filed by Phillips Petroleum Company, *et al.*, United Distribution Companies and the Pipeline Purchaser Group.

[11,444]

Finally, New York suggests that the Department of Interior be invited to participate in these proceedings. While the Department may participate if it desires to do so and New York may encourage its participation, it is not appropriate that the Commission invite such participation.

Based on the foregoing, the motion for modification and clarification should be denied.

The Commission orders:

The motion for modification and clarification filed by the Public Service Commission of New York is denied.

By the Commission.

GORDON M. GRANT
Secretary

[SEAL]

[11,501]

[Caption Omitted]

PRESIDING EXAMINER'S RULING ON MOTION FOR CONVENING OF SETTLEMENT CONFERENCE

(March 12, 1970)

By motion dated February 24, 1970, counsel for Associated Gas Distributors (AGD) requested the Presiding Examiner to convene a settlement conference pursuant to Section 1.18 of the Commission's Rules of Practice and Procedure. A number of the parties to this proceeding have responded thereto supporting such conference—the Municipal Distributors Group, with stated qualifications.

Section 1.18(c) in part states:

> "* * * All parties will be expected to come to the conference fully prepared for a useful discussion of all problems involved in the proceeding, both procedural and substantive, and fully authorized to make commitments with respect thereto. Such preparation should include, among other things, advance study of all relevant material, and advance informal communication between the parties, including requests for additional data and information, to the extent it appears feasible and desirable. * * *"

In the discussions relating to settlement on the last day of the prehearing conference it was pointed out that convening of a settlement conference or conferences prior

[11,502]

to receipt of responses to the cost data questionnaires would in all probability accomplish little since, as noted

at that time, it appears that several of the major parties concerned could, or would, make no commitments prior to receipt and study thereof.

The Presiding Examiner vigorously supports all efforts towards settlement of the issues in this proceeding but it is not clear that anything meaningful could be accomplished prior to receipt of the cost data upon which any possible settlement would necessarily be based. The Presiding Examiner will however welcome further discussion with respect to the advisability of convening such settlement conferences, and what could be accomplished thereat, at the further prehearing conference presently scheduled for April 1, 1970. The parties favoring such conferences should come prepared to demonstrate whether such settlement conferences convened prior to receipt of the aforementioned cost data could result in resolution of any of the issues.

/s/ Martin E. Rendelman
MARTIN E. RENDELMAN
Presiding Examiner

[11,504]

[Caption Omitted]

ORDER REQUIRING REPORTING OF SPECIFIED RESERVES DATA AND PRESCRIBING PROCEDURE

(Issued March 17, 1970)

On January 28, 1970, Pan American Petroleum Corporation, and a number of other producers filed herein a motion requesting the Commission to enter its order requiring the reporting of certain gas reserves information by producer respondents for use in this proceeding. No answers thereto have been filed by any party or intervener. The reserves data in question relate to the volumes of uncommitted proved reserves controlled by the producer respondents in the Southern Louisiana area as of year end 1968 and year end 1969, separately stating the Federal Domain and the remaining Southern Louisiana area. We noted in our order enlarging this proceeding, issued December 15, 1969, that information of this type would be required, and we will accordingly order the reporting of such information, subject to the terms and conditions hereinafter set forth.

The Commission finds:

The public interest requires that the volumes of proved natural gas reserves held by producers in the Southern Louisiana area and not contracted to interstate pipelines be reported and made available in this proceeding in the form and manner hereinafter prescribed.

The Commission orders:

(A) The questionnaire attached hereto as Appendix A shall be completed by all large producer respondents. The questionnaire attached hereto as Appendix B shall be completed

[11,505]

by all original AR69-1 producer respondents. The completed questionnaires shall be mailed to Arthur Young & Co., P. O. Box 1529, Tulsa, Oklahoma 74101 no later than May 1, 1970.

(B) Arthur Young & Co. shall furnish to the staff and to all parties to this proceeding a composite of the individual questionnaire responses as soon as may be possible and will return the individual responses to the respective companies.

(C) The individual producer respondents who make reports pursuant to this order shall make such reports (including any workpapers or other data underlying such reports) available in their offices to the Commission's Staff upon request of Staff counsel.

(D) Compliance with this order shall not constitute nor be construed as a waiver of any claim of privilege in any future case, by any producer respondent.

(E) The individual company responses to the attached questionnaires and any other information revealed by a Staff audit of the responses are to be treated as confidential information without public disclosure by Arthur Young & Co. or Staff. The provisions of § 8(b) of the Natural Gas Act [15 U.S.C. 717g(b)] and 5 U.S.C. 552 (b)(4) (Freedom of Information Act) shall control.

By the Commission.

GORDON M. GRANT
Secretary

[SEAL]

[11,506]

APPENDIX A

SUMMARY OF PROVED NATURAL GAS RESERVES AVAILABLE FOR SALE OR RESERVED FOR "COMPANY USE—WARRANTY GAS" SOUTHERN LOUISIANA AREA, EXCLUDING FEDERAL DOMAIN REPORTED BY INDEPENDENT PRODUCERS

Instructions: Each producer respondent who had total company-wide jurisdictional sales of 10 million Mcf or more during 1968 will report all proved gas reserves in the indicated categories in the Southern Louisiana area, excluding the Offshore Area in Zone 2 and seaward.
Proved Reserves are, using the definition of the Committee on Natural Gas Reserves of the American Gas Association, as follows:

> "The current estimated quantity of natural gas which analysis of geologic and engineering data demonstrate with reasonable certainty to be recoverable in the future from known oil and gas reservoirs under existing economic and operating conditions. Reservoirs are considered proved that have demonstrated the ability to produce by either actual production or conclusive formation test.
>
> "The area of a reservoir considered proved is that portion delineated by drilling and defined by gas-oil, gas-water, or oil-water contacts or limited by structural deformation or lenticularity of the reservoir. In the absence of fluid contacts, the lowest known structural occurrence of hydrocarbons controls the proved limits of the reservoir. The proved area of a reservoir may also include the adjoining portions not delineated by drilling but which can be evaluated as economically productive on the basis of geological

and engineering data available at the time the estimate is made. Therefore, the reserves reported by the Committee include total proved reserves which may be in either the drilled or the undrilled portions of the field or reservoir."

Consistent with procedures of the Committee on Natural Gas Reserves of the American Gas Association, Proved Reserves do not include the "portions of the reservoir hydrocarbon gas recovered in liquid form in surface separators or plant facilities."

[11,507]

Proved Natural Gas Reserves Available for Sale or Reserved for "Company Use—Warranty Gas" shall be reported as the reporting company's working interest (including royalty) in all proved gas reserves in the following categories:

A. Company use volumes held for fulfillment of warranty gas sales contracts but not specifically identified by field in 1968 Form 15 reports of pipelines nor to be specifically identified by field in the 1969 Form 15 reports of pipelines.

B. Volumes held "available for sale" are those which are not covered by gas purchase contracts and are not reserved for direct industrial contracts, company use-warranty gas (A above), or company use—fuel and feedstock.

REPORT OF PROVED NATURAL GAS RESERVES
AVAILABLE FOR SALE OR RESERVED FOR "COMPANY USE—WARRANTY GAS"
SOUTHERN LOUISIANA AREA, EXCLUDING FEDERAL DOMAIN

(Mcf at 14.73 psia)

Volume of Proved Reserves	Company Use-Warranty Gas	Available for Sale
As of December 31, 1968		
As of December 31, 1969		

Certification:

I certify that the information submitted hereon is correct to the best of my knowledge.

Signature _____

Title _____

Company _____

Date _____

Person to be contacted for Staff audit:

Name _____

Position _____

Address _____

Telephone _____

[11,508]

[11,509]

APPENDIX B

SUMMARY OF PROVED NATURAL GAS RESERVES NOT CONTRACTED TO INTERSTATE PIPELINES OFFSHORE LOUISIANA AREA—FEDERAL DOMAIN REPORTED BY INDEPENDENT PRODUCERS

Instructions: Each producer respondent owning an interest in a lease in the Offshore Louisiana Area in Zone 2 and seaward will report all proved gas reserves in the indicated categories.

Proved Reserves are, using the definition of the Committee on Natural Gas Reserves of the American Gas Association, as follows:

> "The current estimated quantity of natural gas which analysis of geologic and engineering data demonstrate with reasonable certainty to be recoverable in the future from known oil and gas reservoirs under existing economic and operating conditions. Reservoirs are considered proved that have demonstrated the ability to produce by either actual production or conclusive formation test.
>
> "The area of a reservoir considered proved is that portion delineated by drilling and defined by gas-oil, gas-water, or oil-water contacts, or limited by structural deformation or lenticularity of the reservoir. In the absence of fluid contacts, the lowest known structural occurrence of hydrocarbons controls the proved limits of the reservoir. The proved area of a reservoir may also include the adjoining portions not delineated by drilling but which can be evaluated as economically productive on the basis of geological and engineering data available at the time the estimate is made. Therefore, the reserves re-

ported by the Committee include total proved reserves which may be in either the drilled or the undrilled portions of the field or reservoir."

Consistent with procedures of the Committee on Natural Gas Reserves of the American Gas Association, Proved Reserves do not include the "portions of the reservoir hydrocarbon gas recovered in liquid form in surface separators or plant facilities."

[11,510]

Proved Natural Gas Reserves not contracted to Interstate Pipelines shall be reported as the reporting company's working interest (including royalty) in all proved gas reserves in the following categories:

A. Volumes committed to direct industrial gas sales contracts, including contracts with subsidiary companies.

B. Volumes held for "company use" which shall include:

(1) Volumes held for fulfillment of warranty gas sales contracts but not specifically identified by field in 1968 Form 15 reports of pipelines nor to be specifically identified by field in the 1969 Form 15 reports of pipelines.

(2) Volumes held as fuel for gas processing plants and field operations and fuel or feedstock for refineries, chemical plants and other similar manufacturing operations, but not subject to specific contract arrangements.

C. Volumes held "available for sale" which shall be those volumes neither: (1) covered by A above, (2) covered by B above, nor (3) covered by contract with an Interstate Pipeline.

REPORT OF PROVED NATURAL GAS RESERVES
NOT CONTRACTED TO INTERSTATE PIPELINES
OFFSHORE LOUISIANA AREA, FEDERAL DOMAIN

(Mcf at 14.73 psia)

Volume of Proved Reserves	Direct Industrial Contracts	Company Use-Warranty Gas	Company Use-Fuel and Feedstock	Available for Sale
As of December 31, 1968				
As of December 31, 1969				

State volume of "Available for Sale" reserves located in fields which (a) contain 50 Bcf or less reserves *and* (b) are located more than 5 miles from a pipeline which is in place or certificated as of December 31, 1969. _____

Certification:

I certify that the information submitted hereon is correct to the best of my knowledge.

Signature _____

Title _____

Company _____

Date _____

Person to be contacted for Staff audit:

Name _____

Position _____

Address _____

Telephone _____

[11,609]

[Caption Omitted]

ORDER ESTABLISHING PROCEDURES WITH RESPECT TO INCREASED RATE FILINGS IN SOUTHERN LOUISIANA

(Issued October 27, 1970)

By separate order issued in Docket No. R-394 concurrently with the issuance of this order, the Commission has lifted the moratorium on increased rate filings by producers in Southern Louisiana. In the subject order we shall establish the procedures to be followed in connection with any increased rate filings made as a result of the lifting of the moratorium within the time limitations prescribed herein.

In the notice of proposed rulemaking issued July 30, 1970 in Docket No. R-394, we proposed that any increased rate filings made pursuant to the lifting of the moratorium would become effective, subject to refund, 45 days after the date of filing. We indicated that the Secretary would advise the filing party of the Commission docket number and the effective date relating thereto. We also proposed to establish refund floors for all vintages of gas sold in Southern Louisiana. Finally, we proposed that where pipeline purchasers file rate increases limited to tracking producer increases, we would waive, where necessary, the requirement for supporting schedules under Section 154.63 of the Commission's Regulations under the Natural Gas Act

[11,610]

provided such schedules are submitted within four months from the date of the pipeline's increased rate filing.

Many of the parties filing comments in Docket No. R-394 have directed their attention to these proposed procedures as invited to do so by the July 30 notice.

The pipelines have pointed out that under the proposed procedure of permitting producer increases to become effective, subject to refund, 45 days from the date of filing, it might be necessary for the pipelines to make tracking filings every day. To avoid this problem they urge us to set a time limit for producer rate filings and to establish a single effective date for all such filings. We agree with the position advanced by the pipelines and will discuss below the appropriate time limit for producer filings.

The 45 day period originally proposed for producer filings does not give the pipeline purchasers or their distribution customers adequate time to track such filings. For this reason we believe it more appropriate to provide a 75 day period after the date of issuance of this order before producers may collect, subject to refund, proposed increased rates filed as a result of the lifting of the moratorium. The 75 day period will apply only to those filings made by producers within 30 days of the date of issuance of this order. Producer filings made thereafter will be subject to the normal Commission suspension procedure.

A pipeline which is not authorized to track rate changes of its suppliers as to gas from Southern Louisiana will be permitted to file a rate increase application to track supplier rate changes; for such purposes the data requirements of Section 154.63 of the Commission's Regulations will be waived if the pipeline filing such a rate adjustment submits working papers with the filing showing the computation thereof. We

shall also waive, where necessary, Section 2.52, Part 2, General Policy and Interpretations, of the Commission's General Rules, which provides that during the suspension of a proposed rate change the underlying effective rate should not be changed. However, a pipeline filing a rate increase application must still give at least 30 days notice as required by Section 4(d) of the Natural Gas Act.

Many of the producers argue that they should be permitted to collect the higher rates which they file for as of the date of issuance of this order. However, as indicated above, such a procedure would not give the pipelines or their customers adequate time to track the producer filings. We shall therefore deny this request.

In the July 30 notice we indicated that we would provide a limitation on potential refund obligations, effective as of the issuance of this order. This floor would apply to all sales currently being made pursuant to stay orders at rates above those set in Opinion No. 546 as well as to increased rate filings made subsequent to the issuance of this order. Many of the producers contend that this provision should be effective as of October 1, 1968, the effective date of Opinion No. 546. This contention relates to the propriety of imposing the moratorium in Opinion No. 546 and has nothing to do with the procedures to be followed in lifting the moratorium. It would therefore be inappropriate to decide this matter here.

Many sales are currently being made pursuant to certificate authorizations which contain prohibitions against filing for contractually authorized increases. The producers claim that it would be inequitable to continue the prohibition against increased rate filings for sales under such certificates while permitting them elsewhere. Some

of these conditions were inserted prior to the issuance of Opinion No. 546 pending its issuance

[11,612]

and the remainder were inserted pursuant to the moratorium provisions of that opinion. Absent a general waiver of these provisions, each rate increase filing involving such a provision would have to be accompanied by a request for waiver thereof pursuant to the provisions of Section 1.7(b) of the Commission's Rules. Since it is our intention that all Commission prohibitions of rate increase filings in Southern Louisiana be lifted, it is appropriate that a general waiver of such prohibitions be granted rather than the grant of a waiver in each individual case.

The Commission finds:

(1) Any proposed increased rate in excess of the applicable ceiling prescribed in Opinion Nos. 546 and 546-A may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful. Accordingly, any above ceiling rate filed subsequent to the issuance of this order, and within the time limit prescribed herein, should be suspended pursuant to the terms and conditions of this order.

(2) Good cause exists for waiving Section 154.63 of the Commission's Regulations under the Natural Gas Act and Section 2.52, Part 2, General Policy and Interpretations of the Commission's General Rules and for waiving any conditions in a temporary or permanent certificate prohibiting a producer from filing for a contractually authorized rate increase with respect to sales from Southern Louisiana.

[11,612]

Order Establishing Procedures

The Commission orders:

(A) Increased rate filings made within 30 days of the date of issuance of this order by producers with respect to sales in Southern Louisiana pursuant to the lifting of the moratorium shall become effective, subject to refund, 75 days after the date of issuance of this order without any further action by the producers involved or the Commission. The Secretary shall advise the filing party of the docket number of the proceeding.

[11,613]

(B) Any refunds which may hereinafter be ordered for any sales of natural gas made by any producer in Southern Louisiana after the date of issuance of this order shall be limited to amounts collected above the rate or rates as determined in Docket No. AR69-1, except for new gas sales under contracts dated after June 17, 1970. Any refunds which may hereafter be ordered for new gas sales under contracts dated after June 17, 1970 shall be limited to amounts collected above the rate or rates as determined in Docket No. AR69-1 or in Docket No. R-389A, "Initial Rates For Future Sales Of Natural Gas For All Areas", whichever is higher.

(C) The provisions of Section 154.63 of the Commission's Regulations under the Natural Gas Act are waived to permit pipeline companies to file rate increase applications to track producer rate increases filed pursuant to the time limitations in this order; such tracking applications may be filed by pipeline purchasers or by pipelines purchasing from such pipeline purchasers which are not authorized to track rate changes of their suppliers with regard to gas from Southern Louisiana, provided that pipelines filing such an adjustment submit working papers with the filing showing the computation thereof, and,

provided further, that the rate or rates as revised by such rate increase applications shall be collected subject to reduction and refund from the effective date of such increased rate or rates.

(D) Section 2.52, Part 2, General Policy and Interpretations, of the Commission's General Rule is waived so as to permit the filing of a rate increase application to track producer rate increases filed pursuant to the time limitations in this order by a pipeline purchaser or by a pipeline purchasing from such a pipeline purchaser where the pipeline has a proposed increased rate or rates under suspension at the time of such tracking application.

[11,614]

(E) Notwithstanding any condition to the contrary in any temporary or permanent authorization issued with respect to any sale by a producer in the Southern Louisiana area, the producer thereunder may file for any contractually authorized increase in rate after the issuance of this order.

By the Commission.

KENNETH F. PLUMB
Acting Secretary

[SEAL]

[11,615]

[Caption Omitted]

ORDER NO. 413

ORDER TERMINATING MORATORIUM IN SECTION 154.105 OF THE COMMISSION'S REGULATIONS UNDER THE NATURAL GAS ACT AND IN OPINION NO. 546-A

(Issued October 27, 1970)

The Commission on July 30, 1970, issued a notice of proposed rulemaking in this proceeding (35 F.R. 12559, August 6, 1970) proposing to terminate the moratorium provided in paragraphs (f) and (g) of Section 154.105 of the Commission's Regulations under the Natural Gas Act (18 CFR 154.105(f) and (g)) and Ordering Paragraph (B) of Opinion No. 546-A (41 FPC 301 at 340).

In response to the notice comments have been filed by a number of independent producers and pipeline purchasers operating in Southern Louisiana, by the Independent Natural Gas Association of America, by Associated Gas Distributors (AGD), by the Municipal Distributors Group (MDG), and by the Public Service Commission of the State of Wisconsin (Wisconsin).[1] All of the producers and pipelines favor the lifting of the moratorium. Only MDG, AGD and Wisconsin oppose the proposed action.

MDG and Wisconsin contend that the moratorium provided in Opinion No. 546 and 546-A should not be lifted based on data which has not been tested in an evidentiary hearing. AGD

[1] Mobil Oil Corporation and Wisconsin filed their comments two days after the deadline prescribed in the July 30 notice. Despite the late filings, we shall consider their comments.

[11,616]

urges that the moratorium issue be decided in Docket No. AR69-1, possibly utilizing an interim order procedure. AGD also requests that consideration be given to imposing limitations on producer price increases if the moratorium is lifted and suggests that the cost data in Docket No. AR69-1 might be appropriate for such purposes.

In the July 30 notice we noted that there are positive indications of a worsening supply situation with new findings of gas falling below production in two successive years, that there are also indications of a sharp drop in the level of gas exploration during 1968 and 1969 which has an adverse impact on future gas supplies, and finally that there are indications of cost increases which have affected the amount of funds devoted to the industry's exploratory effort. In view of these changed circumstances, we believe it important to lift the moratorium promptly. It is neither necessary nor desirable in this particular type of situation to await the results of an evidentiary hearing before taking positive action. Rate increases will continue to be collected subject to refund. Nor is there adequate justification for imposing any additional limitation on the level to which producers may file, aside from contract limitations inherent in the various producer contracts.

Shell Oil Company in its supplemental comments requests the Commission to amend the increased rate level ceiling for all vintage contracts in Southern Louisiana set forth in Section 2.56, Part 2, General Policy and Interpretations, of the Commission's General Rules (18 CFR 2.56). Shell's proposal is outside the scope of the subject rulemaking proceeding. Accordingly, its request is denied.

The procedures which will be utilized as a result of the lifting of the moratorium will be discussed in a separate order issued concurrently with this order.

The Commission finds:

(1) The notice and opportunity to participate in this rulemaking proceeding through the submission, in writing, of data, views, comments and suggestions are in accordance with

all procedural requirements therefor as prescribed in Section 553, Title 5 of the United States Code. Since the action taken herein relieves a restriction previously imposed on producers, compliance with the effective date requirements of 5 U.S.C. 553(d) is unnecessary.

(2) The action taken herein is necessary and appropriate for the administration of the Natural Gas Act. *The Commission,* acting pursuant to the provisions of the Natural Gas Act, particularly Sections 4, 5, 7 and 16 (52 Stat. 822, 823, 824, 825, 830; 56 Stat. 83, 84; 61 Stat. 459; 76 Stat. 72; 15 U.S.C. 717c, 717d, 717f and 717o) *orders*:

(A) Effective as of the date of issuance of this order, paragraphs (f) and (g) of § 154.105, Area rates; Southern Louisiana area, in Part 154, Chapter 1, Title 18 of the Code of Federal Regulations, and Ordering Paragraph (B) of Opinion No. 546-A, 41 FPC 301 at 340, are revoked.

(B) The Secretary of the Commission shall cause prompt publication of this order to be made in the Federal Register.

By the Commission.

KENNETH F. PLUMB
Acting Secretary

[SEAL]

[11,652]

[Caption Omitted]

ANSWER BY PIPELINE PURCHASER GROUP TO MOTION FOR PROMULGATION OF SETTLEMENT PROPOSAL

The Pipeline Purchaser Group hereby answers the motion filed by the United Distribution Companies (UDC) proposing settlement in the above-captioned proceedings, and supports the settlement proposal under the terms and conditions set forth in the Appendix A attachment to such motion. In support hereof, the Pipeline Purchaser Group states as follows:

I.

The Pipeline Purchaser Group consists of the eleven major interstate transmission companies purchasing gas from the Southern Louisiana area, which are as follows:

[11,653]

Florida Gas Transmission Company
Michigan Wisconsin Pipe Line Company
Natural Gas Pipeline Company of America
Southern Natural Gas Company
Tennessee Gas Pipeline Company
Texas Eastern Transmission Corporation
Texas Gas Transmission Corporation
Transcontinental Gas Pipe Line Corporation
Trunkline Gas Company
United Fuel Gas Company
United Gas Pipe Line Company

[11,653]

Answer by Pipeline Purchaser Group to Motion

The members of the Pipeline Purchaser Group support the settlement proposal in the form set forth in Appendix A to the UDC motion, but each company and the Group reserves the right to file supplemental pleadings responding to comments which may be filed by other parties to the proceeding.

II.

The Pipeline Purchaser Group participated actively in the lengthy discussions which culminated in the settlement proposal. The results achieved represent the give and take of true settlement discussions, in which no party's views were ignored or dealt with in less than a sympathetic manner.

[11,654]

This settlement technique has been characterized accurately by the U. S. Court of Appeals for the Fifth Circuit in the *Southern Louisiana Area Rate Cases* (Opinion of March 19, 1970, page 46) as "negotiation, pitting market forces against each other on an aggregate scale, overseen by the Commission," which in this instance involved active participation by the staff of the Commission and by representatives of other governmental agencies. While it would be unreasonable to expect unanimous agreement in a proceeding of this magnitude, the settlement proposal is by its history and terms, a fair resolution of the vital matters confronting the gas industry with respect to this producing area.

III.

The Pipeline Purchaser Group recognizes that in this instance, it would be desirable to provide a evidentiary basis for Commission consideration and ultimate adop-

tion of the settlement proposal. Accordingly, the Group stands ready to supply additional evidence with respect thereto—although it should be emphasized that the gas supply evidence and market data already presented herein is fully consistent with and supportive of the settlement proposal. The Group also desires to be heard at an appropriate time with respect to the procedure for implementing the settlement proposal.

[11,655]

IV.

In accordance with Section 1.18 of the Commission's Rules of Practice and Procedure, the position of the Group and the members thereof shall be privileged in the event the settlement proposal is not adopted in its entirety.

Respectfully submitted,

PIPELINE PURCHASER GROUP

By: /s/ Raymond N. Shibley
RAYMOND N. SHIBLEY
Its Attorney

[11,658]

Answer by Indicated Producers to Motion

[11,658]

[Caption Omitted]

ANSWER BY INDICATED PRODUCERS TO MOTION FOR PROMULGATION OF SETTLEMENT PROPOSAL

Pursuant to Section 1.9 of the Rules of Practice And Procedure of the Federal Power Commission ("Commission"), the undersigned producers ("Producers") hereby answer the Motion for Promulgation of Settlement Proposal filed by the United Distribution Companies ("UDC"), and urge the Commission to grant said Motion and issue an order in these proceedings containing the terms and conditions set forth in the Settlement Proposal attached to the UDC motion as Appendix A. In support hereof, Producers show as follows:

I.

On April 1, 1970, the Presiding Examiner to whom Docket No. AR69-1 has been assigned for hearing entered an order convening a settlement conference pursuant to Section 1.18 of the Commission's Rules and directed the parties hereto to confer for the purpose of attempting to formulate a Settlement Proposal (Tr. 1075). A similar conference was convened by the Assistant General Counsel of the Commission in Docket Nos. AR61-2, *et al.*, on January 13, 1967.

[11,659]

Pursuant to and in compliance with such direction of such Examiner, the parties hereto, including pipelines, distributors, state commissions and producers, as well as the Commission Staff, have held settlement conferences. At those conferences it has been determined that there are other matters which, although they are the subject

of other proceedings before the Commission, are so intertwined with Docket Nos. AR61-2, *et al.*, and AR69-1 that the resolution of some or all of the issues in those matters was required to completely resolve the issues in Docket Nos. AR61-2, *et al.*, and AR69-1. Those conferences have resulted in the Settlement proposal and it is believed that this proposal will receive the support of a substantial number of the other parties to these proceedings.

II.

An ever-worsening gas supply crisis is being faced by the Commission, the industry it regulates and the consumers served by that industry. The record in the captioned cases contains testimony of chief executives of distribution companies, as well as detailed factual evidence, documenting the seriousness of this current supply crisis.

Of all of the proceedings before the Commission, these cases contain or will contain the most complete and up to date record on demand requirements, supply forecasts, deliverability, rate of return and cost data of every type. At the appropriate time designated by the Commission, Producers will be prepared to submit further evidence in the subject proceedings if such is required.

[11,660]

We urge the Commission to expedite in every feasible way, consistent with the requirements of due process, action on the Settlement Proposal and to issue, if necessary, appropriate amendments to its Regulations Under the Natural Gas Act in order to implement the provisions of such proposal.

III.

It is the position of the undersigned producers that the various provisions of the Settlement Proposal are all so interrelated that a change in any one would be likely to affect all of the other provisions. We would, therefore, emphasize that the Settlement Proposal must be considered as a whole and not considered piecemeal.

IV.

Each Producer individually represents to the Commission that the ceiling prices and other provisions contained in the Settlement Proposal provide incentive for the exploration for and development of gas reserves in the Southern Louisiana Area. In view of the nature of producing and finding hydrocarbons, it is unrealistic to expect producing companies to guarantee that this proposal will elicit a specific supply of gas; however, it is believed that this proposal will make funds available to the producing industry and create a regulatory atmosphere which should provide an incentive for a substantial increase in exploratory and developmental activities and make a major contribution to bringing forth additional supplies of gas from the Southern Louisiana Area to meet the demands of all consumers supplied by this area.

WHEREFORE, Producers pray that the Commission enter an order promulgating the rates, terms and conditions of the Settlement Proposal filed in the subject proceedings.

Dated this 6th day of November, 1970.

Respectfully submitted,

SHELL OIL COMPANY
THOMAS G. JOHNSON
DAN A. BRUCE
WILLIAM G. RIDDOCH
Room 1168, One Shell Plaza
Houston, Texas 77002

By /s/ Thomas G. Johnson
THOMAS G. JOHNSON
Attorney for Shell Oil Company

[11,661]

Answer by Indicated Producers to Motion

AND ON BEHALF OF:

AMERADA HESS CORPORATION
Edwin S. Nail
P. O. Box 2040
Tulsa, Oklahoma 74102

ATLANTIC RICHFIELD COMPANY
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P. O. Box 2819
Dallas, Texas 75221
Charles E. McGee
McGee & Ketcham
1145 - 19th Street, N.W.
Washington, D.C. 20036

THE CALIFORNIA COMPANY, A DIVISION OF CHEVRON OIL COMPANY
Woollen H. Walshe
1111 Tulane Avenue
New Orleans, Louisiana 70112
Justin R. Wolf
Wolf & Case
1625 K Street, N.W.
Washington, D.C. 20006

[11,662]

CITIES SERVICES OIL COMPANY
R. J. Leithead
Cities Service Building
Bartlesville, Oklahoma 74003

FOREST OIL CORPORATION
W. J. Stark
1300 National Bank of Commerce Building
San Antonio, Texas 78205
Charles B. Parker
1600 Security Life Building
Denver, Colorado 80202
Richard F. Generelly
Shannon and Morley
1700 K Street, N.W.
Washington, D.C. 20006

FREEPORT OIL COMPANY, DIVISION OF FREEPORT SULPHUR COMPANY
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GETTY OIL COMPANY
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Houston, Texas 77001

GULF OIL CORPORATION
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B. James McGraw
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Tulsa, Oklahoma 74102

HUMBLE OIL & REFINING COMPANY
Martin N. Erck
Robert L. Norris
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KERR-MCGEE CORPORATION
Willard P. Scott
Derrill Cody
Kerr-McGee Building
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MARATHON OIL COMPANY
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Findlay, Ohio 45840

Answer by Indicated Producers to Motion

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John L. Williford
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74003

TENNECO OIL COMPANY
John E. Watson
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UNION CARBIDE PETROLEUM CORPORATION
Melbert Schwartz, Jr.
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UNION OIL COMPANY OF CALIFORNIA
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UNION TEXAS PETROLEUM, A DIVISION OF ALLIED CHEMICAL CORPORATION
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Washington, D.C. 20006

[11,665]

[Caption Omitted]

ANSWER OF TEXACO INC. TO MOTION FOR PROMULGATION OF SETTLEMENT PROPOSAL

Pursuant to Section 1.9 of the Rules of Practice and Procedure of the Federal Power Commission ("Commission"), Texaco Inc. ("Texaco") hereby answers the Motion for Promulgation of the Settlement Proposal filed by the United Distribution Companies ("UDC"). Texaco urges the Commission to grant said motion and issue an order in the subject proceedings promulgating the terms and conditions set forth in the Settlement Proposal attached to the UDC Motion as Appendix A in all aspects, except with regard to Section 3.3.2, related to *Contingent Escalation of Ceiling Prices.* Texaco has set out below an alternative method of handling the contingent escalations and the reasons why such should be adopted in lieu of that presently proposed.

[11,666]

In support hereof, Texaco shows as follows:

I.

An ever-worsening gas supply crisis is being faced by the Commission, the industry it regulates and the consumers served by that industry. The record in the captioned cases contains testimony of chief executives of distribution companies, as well as detailed factual evidence, documenting the seriousness of this current supply crisis. Of all of the proceedings before the Commission, these cases contain or will contain the most complete and up to date record on demand requirements,

supply forecasts, deliverability, rates of return and cost data of every type. At the appropriate time designated by the Commission Texaco with other producers will be prepared to submit further evidence in the subject proceedings if such is required.

Texaco urges the Commission to expedite in every feasible way, consistent with the requirements of due process, action on the Settlement Proposal, as modified in the manner proposed herein, and to issue, if necessary, appropriate amendments to its Regulations Under the Natural Gas Act in order to implement the provisions of such proposal.

II.

The Settlement Proposal attached to the motion filed by UDC contains a Section 3.3.2 entitled *"Contingent Escalations of Ceiling Prices"*. As proposed in accordance with the provisions

[11,667]

of this section the ceiling prices for contracts dated prior to October 1, 1968 for *all* producers shall be increased, subject to specific conditions and limitations, by one-half cent (0.5¢) per Mcf when the producing industry has committed to jurisdictional sales New Gas Reserves in the amount of seven and one-half (7.5) trillion cubic feet in the Southern Louisiana Area. If the same terms and conditions are met, the ceiling prices with respect to *all* producers will further increase one-half cent (0.5¢) per Mcf upon the commitment of eleven and one-quarter (11.25) trillion cubic feet of New Gas Reserves and an additional one-half cent (0.5¢) per Mcf upon the commitment of a total of fifteen (15) trillion cubic feet of New Gas Reserves.

With respect to gas sold under contracts dated prior to October 1, 1968, in lieu of providing higher prices which would become immediately effective at the time of approval by the Commission of the subject Settlement Proposal, this contingent escalation section has been included for the purpose of providing producers with an incentive to find and commit new supplies of gas to the interstate market by increasing the ceiling prices with respect to these contracts at some point in the *future* upon the date of commitment of a specific volume of reserves. Texaco urges that in order for there to be a realistic incentive which is in the public interest, Section 3.3.2 must

[11,668]

be modified to the extent that rather than the contingent escalations being triggered when there has been an industry commitment of a specific volume of reserves to the interstate market, the escalation would be triggered with respect to each producer's sales based upon a commitment by that producer of its proportionate share of the specified volume of reserves, *i.e.*, the ceiling prices with respect to an individual producer's contracts dated prior to October 1, 1968 would be increased by one-half cent (0.5¢) per Mcf upon the commitment to jurisdictional sales of its proportionate share of seven and one-half (7.5), then eleven and one-quarter (11.25) and finally fifteen (15) trillion cubic feet of New Gas Reserves to jurisdictional sales. (See attached Appendix setting out all required revisions to Section 3.3.2.[1])

The necessity for modifying Section 3.3.2 is justified for the following reasons:

[1] The method of determining a producer's "proportionate share" of the required reserves is described in Subsection (e) of this revised section.

1. As noted, under the proposed concept the escalation of the prices applicable to contracts dated prior to October 1, 1968, depends upon the entire producing industry committing specific volumes of New Gas Reserves over and above those which must be committed to jurisdictional sales in order to discharge refund obligations. If a producing company knows that it would

[11,669]

qualify for a rate increase based on a commitment of a fixed amount of gas reserves it could program its activities and allocate capital in an attempt to attain that goal. The company could estimate, based upon its own experience and judgment, how much exploratory and developmental work might have to be undertaken, how much capital would have to be allocated to these projects and, most importantly, when the additional revenue resulting from such effort might be anticipated if the effort is successful. Further, it could also relate this effort to the effort needed to search for reserves in order to discharge its refund obligations.

Under the concept presently proposed the rate increase is not related to what commitment of reserves to jurisdictional sales an individual producer makes or the effort that a producer makes to find gas for the interstate market, but is tied to when there is reflected in the Commission's records maintained pursuant to Section 2.8 that *all* producers have made a commitment of the required quantity of gas. A company could make a diligent effort to find gas, commit such to the interstate market and still not get the benefit of a rate increase since all producers had not committed enough gas to reach the seven and one-half (7.5), the eleven and one-quarter (11.25) and fifteen (15) trillion cubic feet levels. Thus, using the industry-wide approach, it is highly

[11,670]

questionable what incentive there will be for a company to make investments to search for gas in hopes of obtaining higher prices for gas sold under contracts dated prior to October 1, 1968. whereas under the individual approach being recommended herein by Texaco the uncertainty of attaining the necessary goals would be diminished and a realistic incentive could exist.

2. Under the proposal transmitted by the UDC all producers will receive a simultaneous escalation of the ceiling prices applicable to contracts dated prior to October 1, 1968 regardless of whether a producer has made a commitment of New Gas Reserves to jurisdictional sales during the period prior to October 1, 1977. It would seem rather inequitable from a public interest standpoint for one company to diligently search for gas, commit such to the interstate market and attain an increase in its ceiling prices whereas at the same time another company might not be entering into the search of gas supplies or would not commit gas found to jurisdictional sales, but would still get the benefit of the contingent price escalations.

3. From the standpoint of administering the contingent escalations it would be far more feasible to do such on an individual company basis rather than on an industry-wide basis. Section 3.3.2 is intricately related to Section 8 whereunder New Gas Reserves are committed to jurisdictional sales in order to

[11,671]

discharge refund obligations. The Commission can easily monitor whether an individual company has properly discharged its refund obligations through the commit-

ment of New Gas Reserves and the inter-relationship of those commitments to other commitments which would have to be made by that individual company in order for the contingent escalation to be triggered. If questions or issues arise as to whether the refund obligations have been fully discharged and whether enough additional reserves have been committed to trigger the contingent escalations these difficulties can be more easily resolved and disposed of on an individual company basis rather than on an industry-wide basis.[2]

Accordingly, Texaco urges that the Commission in lieu of promulgating the terms and provisions of Section 3.3.2 contained in the Settlement Proposal attached as Appendix A to the UDC motion that it adopt the modified Section 3.3.2 attached to this answer as an Appendix.

[11,672]

III.

Texaco individually represents to the Commission that the ceiling prices and other provisions contained in the Settlement Proposal provide incentive for the exploration for and development of gas reserves in the Southern Louisiana Area. In view of the nature of producing and finding hydrocarbons, it is unrealistic to expect producing companies to guarantee that this proposal will elicit a specific supply of gas; however, it is believed that this proposal will make funds available to the producing industry and create a regulatory atmosphere which should provide an incentive for a substantial increase in explora-

[2] Under the proposal set out as an Appendix to the UDC motion, under Section 3.3.2(a) there is an intricate procedure for adjusting charges if a contingent escalation is triggered but it is later determined that some of the reserves should be nullified and the escalation should not have occurred. This provision can be eliminated under the individual approach recommended by Texaco.

tory and developmental activities and make a major contribution to bringing forth additional supplies of gas from the Southern Louisiana Area to meet the demands of all consumers supplied by this area.

WHEREFORE, Texaco prays that the Commission enter an order promulgating the rates, terms and conditions of the subject Settlement Proposal, as modified in the manner proposed herein with respect to Section 3.3.2.

Dated this 6th day of November, 1970.

Respectfully submitted,

TEXACO INC.

J. DONALD ANNETT
ROBERT E. NEWEY
KIRK W. WEINERT
P. O. Box 52332
Houston, Texas 77052

By /s/ J. Donald Annett
J. DONALD ANNETT

November 6, 1970

[11,673]

APPENDIX

3.3.2 CONTINGENT ESCALATIONS OF CEILING PRICES.

For contracts dated prior to Otcober 1, 1968, except newly discovered reservoirs under Section 3.2, each of the ceiling prices as set forth in Section 3.1 and as modified by Sections 2.3, 2.4, 3.3.1, 3.4 and 3.5, shall be increased with respect to an individual producer upon the commitment of its proportionate share of New Gas Reserves in the Southern Louisiana Area prior to October 1, 1977, to jurisdictional sales subject to the following terms and conditions:

(a) New Gas Reserves committed by each producer and reported by the purchaser pursuant to Section 1.4 hereof shall first be applied to the satisfaction of such producer's outstanding refund obligations pursuant to Section 8.2.2 hereof and when and to the extent so applied shall be excluded under this Section 3.3.2.

(b) When the New Gas Reserves Record maintained pursuant to Section 2.8 reflects that a producer has committed its proportionate share of a total of seven and one-half (7.5) trillion cubic feet of New Gas Reserves in the Southern Louisiana Area to jurisdictional sales prior to October 1, 1977, and such

[11,674]

reserves have been recorded for the purpose of this Section 3.3.2, the Commission shall, within fifteen (15) days, issue a public notice to such effect. Upon the issuance of such notice the ceiling prices then in effect with respect to the producer shall be increased by one-half cent

(0.5¢) per Mcf and such increased ceiling prices shall continue in effect unless and until further adjusted.

(c) Further, successive one-half cent (0.5¢) per Mcf increases in the ceiling prices shall be made in a similar manner and at such time as such record and notice reflect that a producer has committed its proportionate share of a total of eleven and one-quarter (11.25) trillion cubic feet of New Gas Reserves in the Southern Louisiana Area to jurisdictional sales prior to October 1, 1977, and such reserves have been recorded for the purpose of this Section 3.3.2 and again at such time as such record and notice reflect that a producer has committed its proportionate share of a total of fifteen (15) trillion cubic feet of New Gas Reserves in the Southern Louisiana Area to jurisdictional sales prior to October 1, 1977, and such reserves have been recorded for the purpose of this Section 3.3.2.

[11,675]

(d) For the purpose of this Section 3.3.2 New Gas Reserves under (a) of Section 1.4 hereof shall be considered to have been committed when such commitment is not subject to termination by the producer or the producer has accepted a temporary authorization or permanent certificate issued by the Commission authorizing the sale. In the event that the Commission should ultimately deny the application for a permanent certificate as to any sale from such New Gas Reserves, such reserves shall be eliminated from the cumulative record being maintained under Section 2.8 hereof. New Gas Reserves under (b) of Section 1.4 hereof shall be considered to have been committed when the report provided by Section 1.4 has been filed by the purchaser with the Commission.

(e) A producer's "proportionate share" of New Gas Reserves shall be derived by taking the relationship of a producer's actual deliveries to interstate pipelines from the Southern Louisiana Area during the years 1965 through 1969 to the total of such deliveries by all producers from the Southern Louisiana Area during such period.

[11,678]

[Caption Omitted]

ANSWER BY COMMISSION STAFF TO MOTION FOR PROMULGATION OF SETTLEMENT PROPOSAL

Pursuant to Section 1.9 of the Rules of Practice and procedure of the Commission, the staff of the Commission hereby answers the Motion for Promulgation of Settlement Proposal filed by the United Distribution Companies ("UDC"), and urges the Commission to grant said Motion and issue an order in these proceedings containing the terms and conditions set forth in the Settlement Proposal which is attached to the UDC motion as Appendix A. In support of the Settlement Proposal, the staff would show the Commission the following:

I.

Numerous settlement conferences have been held in Docket No. AR69-1 since the first was convened by the Presiding Examiner on April 1, 1970. The resolution of all issues in the Southern Louisiana Area necessarily required consideration

[11,679]

of Docket Nos. AR61-2, *et al.* Although the Commission has already issued orders in those proceedings, the Court of Appeals for the Fifth Circuit has given the Commission authority to reopen any part of its orders that circumstances require be reopened. Petitions for writs of certiorari to review the opinion of the Fifth Circuit are presently pending before the Supreme Court. However, it is staff's understanding that all parties agreeing to this Settlement Proposal who have such petitions pending before the Court will ask that they either be withdrawn entirely or asserted only conditionally.

II.

Although all parties to Docket Nos. AR61-2, *et al.*, and Docket No. AR69-1 are not supporting the Settlement Proposal, staff believes that it has widespread support and that its promulgation would be in the public interest. All major interstate pipeline purchasers of natural gas in the Southern Louisiana Area stand in support of the Settlement Proposal, as do all members of the two major distribution groups, UDC and the Associated Gas Distributors.

III.

The evidence which is presently in the record or which will be placed in the record in the near future pursuant to

[11,680]

the orders of the Commission will sustain the terms and conditions of this Settlement Proposal.

IV.

Virtually all of the major producers are supporting the Settlement Proposal. In connection with this support, each has individually represented to the Commission that "the ceiling prices and other provisions contained in the Settlement Proposal provide incentive for the exploration for and development of gas reserves in the Southern Louisiana Area. In view of the nature of producing and finding hydrocarbons, it is unrealistic to expect producing companies to guarantee that this proposal will elicit a specific supply of gas; however, it is believed that this proposal will make funds available to the producing industry and create a regulatory atmosphere which should provide an incentive for a substantial increase in exploratory and developmental activities and make a major con-

tribution to bringing forth additional supplies of gas from the Southern Louisiana Area to meet the demands of all consumers supplied by this area."

[11,681]

Accordingly, Staff prays that the Commission enter an order promulgating the rates, terms and conditions of the Settlement Proposal filed in these proceedings.

Respectfully submitted,

/s/ Leo Forquer,
LEO FORQUER,
Assistant General Counsel

/s/ Stephen A. Wakefield,
STEPHEN A. WAKEFIELD,
Assistant to General Counsel

/s/ Richard V. Mattingly, Jr.
RICHARD V. MATTINGLY, JR.
Attorney

Federal Power Commission
Washington, D. C. 20426.

[11,683]

[Caption Omitted]

ANSWER OF THE SUPERIOR OIL COMPANY TO MOTION FOR PROMULGATION OF SETTLEMENT PROPOSAL

Now comes THE SUPERIOR OIL COMPANY (Superior), pursuant to Section 1.9 of the Rules of Practice and Procedure of this Commission, and answers the Motion for Promulgation of Settlement Proposal filed in the above dockets on the 6th day of November, 1970, as follows:

I.

It is Superior's position that the settlement proposal constitutes a fair and reasonable disposition and resolution of the issues and matters covered thereby, and therefore Superior generally supports that proposal.

Notwithstanding general support for the settlement proposal, Superior feels obligated to point out that the rate levels are lower than those it regards as necessary to bring forth gas from the Southern Louisiana Area in sufficient quantities to meet the demands of all consumers supplied by that area. The resulting refunds also create an amount which in

[11,684]

Superior's opinion may create a hardship upon the industry with a depressant effect on the industry's exploration and development efforts in the area.[1]

[1] With particular reference to Superior's position under the proposal it should be pointed out that same will create for Superior the greatest refund obligation for that of any producer in the

While, as stated above, Superior cannot represent that the instant proposal will provide incentives for exploration for and development of gas reserves in the Southern Louisiana Area which should bring forth additional supplies to meet the demands of all customers supplied by that area during the term of said proposal, Superior does represent

[11,685]

to the Commission that in its opinion the ceiling prices and other provisions contained in the settlement proposal provide present incentive for the exploration for and development of gas reserves in the Southern Louisiana Area. In view of the nature of producing and finding hydrocarbons, it is unrealistic to expect producing companies to guarantee that the proposal will elicit a specific supply of gas; however, it is believed that the ceiling prices and other provisions of this proposal will make funds available to the producing industry and create a regulatory atmosphere which should provide an incentive for a substantial increase in exploratory and development activities the result of which should make a major contribution to bringing forth additional supplies of gas from the Southern Louisiana Area.

Southern Louisiana Area without any substantial increase over past collections in revenue from "old" gas. Of course, receipt of unconditional revenue is an advantage. The provision for liquidation of refund obligations by credit for New Gas Reserves is a positive incentive to find New Gas Reserves but it is only a part way approach to the problem. Total liquidation of Superior's refund obligation by New Gas Reserves credit will require a prodigious exploration and development effort on Superior's part and a better than average success in such effort. The uncertainty of success from exploratory efforts will require Superior to formulate its programs for exploration and development, particularly those near the end of a period, with recognition that in the absence of such success it may still be required to pay its remaining refund obligations if a petition for special relief is not granted. This will restrict such efforts to prospects believed to be far better than average.

WHEREFORE, SUBJECT ONLY TO THE ABOVE, SUPERIOR PRAYS that the Commission promulgate the settlement proposal filed herein as a Commission order.

Respectfully submitted,

THE SUPERIOR OIL COMPANY

/s/ H. W. Varner
H. W. VARNER
Assistant General Counsel

Of Counsel:

H. W. Varner
The Superior Oil Company
P. O. Box 1521
Houston, Texas 77001

Frank P. Saponaro, Jr.
The Superior Oil Company
1725 K Street, N. W.
Washington, D. C. 20006

[11,687]

[Caption Omitted]

RESPONSE OF ASSOCIATED GAS DISTRIBUTORS TO MOTION OF UNITED DISTRIBUTION COMPANIES (UDC) FOR PROMULGATION OF SETTLEMENT PROPOSAL

Pursuant to Section 1.18 of the Commission's Rules of Practice and Procedure, Associated Gas Distributors (AGD)[1] hereby responds in support of the Motion of United Distribution Companies (UDC) for Promulgation of Settlement Proposal filed in this proceeding on November 6, 1970. In support of its position, AGD states as follows:

I.

The AGD companies have actively participated in this and in earlier area rate proceedings since the Commission's adoption of the area approach to producer rate regulation.

[11,688]

The principal objective of AGD's efforts in these cases has been (a) to achieve a price structure that would protect the consumer and bring forth an adequate supply of gas for the interstate market and (b) to bring an end to the uncertainty and instability in gas prices which have prevailed for so long. The settlement proposal now before the Commission results from a series of conferences initially convened in response to AGD's Motion for Convening Settlement Conference; we believe that it serves the above-stated objectives in a manner consistent with the public interest.

[1] The names of the AGD companies joining in this response are listed in the attached appendix. In addition, Long Island Lighting Company reserves its right to file a separate supplemental response.

II.

AGD's support of the settlement proposal is based on the expectation that its approval will have a favorable impact on the gas supply situation. The rate ceilings imposed by the proposal, as well as the refund provisions, are linked to the commitment of new gas reserves to the interstate market. Additionally, the terms of the settlement proposal, and the major producers' responses thereto, include the pledge that, the settlement, if adopted,

> . . . should provide incentive for a substantial increase in exploratory and developmental activities and make a major contribution to bringing forth additional supplies of gas from the Southern Louisiana Area to meet the demands of all consumers supplied by this area.

[11,689]

Given the vital significance of the Southern Louisiana Area in the total gas supply picture now and in future years, this assurance by the producers is a major factor which warrants approval of the settlement proposal.

III.

Under the terms of the proposal, a pattern of producer price ceilings would be made applicable to both new and existing sales of gas for a substantial period in the future. These provisions, if adopted, would yield a significant degree of price stability in this, the nation's most important gas supply area. In the absence of affirmative Commission action on the settlement proposal, the prevailing price uncertainty will continue for an indefinite period, with serious adverse effects on the industry, the AGD companies and the consumers they serve.

IV.

This response is submitted on the express condition that it is and shall be fully privileged and without prejudice to the position and rights of Associated Gas Distributors to contend otherwise in this proceeding or in any other proceedings, in this or any other forum, with

respect to the establishment of rates for the Southern Louisiana area or any other area.

Respectfully submitted,

ASSOCIATED GAS DISTRIBUTORS

/s/ John E. Holtzinger, Jr.
JOHN E. HOLTZINGER, JR.
Counsel

MORGAN, LEWIS & BOCKIUS
1140 Connecticut Avenue, N. W.
Washington, D. C. 20036
Of Counsel

November 9, 1970

[11,694]

[Caption Omitted]

NOTICE OF MOTION FOR PROMULGATION OF SETTLEMENT PROPOSAL

(November 9, 1970)

Take notice that on November 6, 1970, certain parties to these proceedings, who collectively refer to themselves as "United Distribution Companies" or "UDC", filed a motion in the above-entitled proceedings for an order of the Commission promulgating a Settlement Proposal, and for approval thereof, pursuant to Section 1.12 of the Rules of Practice and Procedure of this Commission.

The Settlement Proposal resolves issues in Docket Nos. AR61-2, *et al.*, and AR69-1, provides for specified settlement rates for certain past periods, the disposition of monies collected subject to refund in excess of said rates for such past periods in accordance with certain terms and conditions, and for settlement rates to be charged prospectively for specified periods of time.

All terms of the proposal are more fully set forth therein, and copies of the Settlement Proposal were served on all parties of record. A copy of the proposal is available to the public for examination at the Office of Public Information, Room 2523, Federal Power Commission, 441 G Street, N. W., Washington, D. C.

Comments or objections relating to the Settlement Proposal may be filed with the Federal Power Commission, Washington, D. C., 20426, and upon all parties to the proceedings, in accordance with Section 1.17 of the Rules of Practice and Procedure, on or before December 11, 1970.

GORDON M. GRANT
Secretary

[11,695]

[Caption Omitted]

SUPPLEMENTAL ANSWER BY COMMISSION STAFF TO MOTION FOR PROMULGATION OF SETTLEMENT PROPOSAL

As a supplement to the answer filed by the Commission staff on November 6, 1970, in support of the Settlement Proposal which was filed by the United Distribution Companies, the staff would further show the following:

I.

Unconditional petitions for writ of certiorari before the Supreme Court to review the opinion of the Fifth Circuit in *Austral Oil Co., et al.* v. *F.P.C.*, —— F. 2d —— (1970), are presently being asserted only by Mobil Oil Corporation, the Continental Oil Company, Bradco Properties, Inc., *et al.*, the City of Norwich, the Public Service Commission of the State of New York and the Municipal Distributor Group.

II.

At the time the original answer of the staff was filed with the Commission, the members of the Associated Gas

[11,696]

Distributors had not filed their answer. On November 9, 1970, the answer of that distribution group was filed with the Commission. Although not all members of that group did support the Settlement Proposal in that answer, as had been stated in the initial answer of the staff, almost

all of the members of that group did file in support of the Settlement Proposal.

Respectfully submitted,

/s/ Leo Forquer
LEO FORQUER,
Assistant General Counsel

/s/ Stephen A. Wakefield
STEPHEN A. WAKEFIELD,
Assistant to General Counsel

/s/ Richard V. Mattingly, Jr.
RICHARD V. MATTINGLY, JR.
Attorney
Federal Power Commission
Washington, D. C. 20426.

[11,698]

Notice of Hearing

[11,698]

[Caption Omitted]

NOTICE OF HEARING

(November 10, 1970)

TO ALL PARTIES:

Please take notice that a hearing in the above-entitled matter will convene at 9:30 a.m. on November 17, 1970, in a hearing room of the Federal Power Commission for discussion by the parties with respect to the scheduling of dates for the filing of testimony and cross-examination in connection with Phase II of this proceeding.

/s/ Martin E. Rendelman
MARTIN E. RENDELMAN
Presiding Examiner

DC-30

Answer by Long Island Lighting Company to Motion

[11,699]

[Caption Omitted]

ANSWER BY LONG ISLAND LIGHTING COMPANY TO MOTION FOR PROMULGATION OF SETTLEMENT PROPOSAL

Long Island Lighting Company hereby responds to the motion for Approval of Settlement Proposal filed in this proceeding by United Distribution Companies (UDC) on November 6, 1970, as follows:

I.

Long Island Lighting Company (Lilco) has been a member of Associated Gas Distributors (AGD) since its inception and has supported AGD's activities in these and other proceedings. Lilco's position with respect to gas matters has been guided by the intense competition between gas and fuel oil for the space heating market in its service area. Much of this fuel oil is supplied by some of the same entities which are seeking higher prices for their natural gas.

II.

Despite this competition by the fuel oil industry, Lilco has been able, over the years, to increase the number of space heating customers it serves. Although its presently committed supplies from pipeline companies will enable Lilco to continue its

[11,700]

expansion program for at least another year, Lilco has been advised by its pipeline suppliers that little or no additional gas will be available in the near future for new customers. These suppliers have stated that the

availability of uncommitted gas, particularly in the Southern Louisiana area, is extremely limited and that exploration and development activities are at a very reduced level.

III.

Obviously the easiest and quickest solution to the present unavailability of natural gas supplies is to provide more money to the natural gas producers through higher rates. To this extent, Lilco believes that support of the proposed settlement is in its best interest. As a matter of fact, in light of all circumstances present and information known, support of the proposed settlement is the only feasible solution which appears to be available at this time.

IV.

Accordingly, Lilco supports the proposed settlement and urges its adoption by the Commission. By its position herein, however, Lilco waives no legal right of any nature to take such appropriate action in any forum or jurisdiction as the circumstances may require as a result of any of the activities of any of the parties to these proceedings. Lilco's support is also made on the express condition that it is and shall be fully privileged and without prejudice to the position and rights of Long

[11,701]

Island Lighting Company to contend otherwise in this proceeding or in any other proceedings with respect to any issue, principle or method involved in the establishment of rates for the Southern Louisiana area or any other area.

Answer by Long Island Lighting Company to Motion

Dated this 12th day of November, 1970.

Respectfully submitted,

LONG ISLAND LIGHTING COMPANY

EDWARD M. BARRETT
IRA L. FREILICHER
250 Old Country Road
Mineola, New York 11501

By /s/ Ira L. Freilicher
IRA L. FREILICHER

[11,703]

[Caption Omitted]

ANSWER OF CONTINENTAL OIL COMPANY TO MOTION FOR PROMULGATION OF SETTLEMENT PROPOSAL

Pursuant to Section 1.9 of the Rules of Practice and Procedure of the Federal Power Commission, Continental Oil Company (Continental) hereby answers the Motion for Promulgation of Settlement Proposal filed by the United Distribution Company (UDC). Continental shows as follows:

I.

The Settlement Proposal appended to the Motion filed by UDC purports to address itself to the Rayne Field and Bastian Bay proceedings which are before the Commission at Dockets G-12446, *et al.*, and CI65-910, *et al.*, respectively. Continental, of course, is a principal seller involved in the Rayne Field proceedings which have culminated in Opinions 565 issued August 6, 1969, and 565-A issued September 29, 1970.

[11,704]

Section 2.7 of UDC's Settlement Proposal states that the terms thereof "no not dispose of any issues in the Rayne Field or Bastian Bay Field proceedings."

The above provision of Section 2.7 is in conflict with the Commission's own pronouncement in Opinion 565-A, wherein the Commission stated in paragraph 25 of the majority opinion as follows:

> "25. The result is that the just and reasonable rates applicable to the Southern Louisiana area in which the Rayne Field is situated have not been fully de-

termined, nor has it been determined whether refunds should be made by the producers in that area either for the periods before or after October 1, 1968. In these circumstances it is our opinion that the public interest precludes our ordering refunds to be paid by the Rayne Field producers at this time. The myriad problems confronting the Commission in coping with producer regulation render our task difficult and complex, at best. However, the one objective that must always be kept in sight is the need to provide fair and equal treatment for all of those regulated. It is essential, therefore, that the four producers involved in this proceeding should be afforded the same treatment as will be given to all other producers in Southern Louisiana. *In this regard, we believe that the just and reasonable rates which ultimately flow out of any settlement*, or further proceedings in AR61-2, or AR69-1, *should govern the level of payments in this case prior to October 1, 1968, as well as after that date.* While we may find ultimately that refunds should be paid, we need not discuss here the contentions made by Continental with respect to the appropriateness of refunds or their computation (assuming a firm Southern Louisiana area rate)." (Slip Opinion pp. 10-11, emphasis supplied.)

In Opinion 565-A, the Commission thus expressly has held that any just and reasonable area rate determinations which might derive from settlement in the captioned

proceedings "should govern the level of payments in this [the Rayne Field] case." This is tantamount to a disposition of critical issues in the Rayne case through settlement in the Southern Louisiana area rate proceedings at Dockets AR61-2 and AR69-1.

In view of these clear provisions of Opinion 565-A, any Commission order herein promulgating the terms and conditions of the Proposal should not reflect any modification of or restriction upon the Commission's announced intentions and holdings in Opinion 565-A.

We would note that none of the producer sellers in the Rayne Field proceedings have agreed with or joined in the Negotiation of the stated provision of Section 2.7 of the UDC Settlement Proposal. There is no legal power for other parties to the Southern Louisiana area rate proceedings to "negotiate" with respect to what will be the effect of the area rate Settlement Proposal upon the Rayne sellers or the proceedings upon their certificate applications therein. To the extent that the Settlement Proposal filed by UDC purports not to dispose of refund and price issues in the Rayne Field case and to conflict with the Commissions Opinion 565-A therein, Continental opposes such Settlement Proposal.

Aside from the express provision of Opinion 565-A, the Natural Gas Act and federal antitrust laws would require that in the determination of sellers' prices and refunds in

Rayne, any settlement or other determination of just and reasonable rates in the Southern Louisiana area herein should govern or dispose of such issues in Rayne. For example, Sections 4 and 5 of the Natural Gas Act provide, in effect, that rates for the sale of natural gas must be just and reasonable and not unduly discriminatory or preferential. 15 USC Sec. 717c, 717d. If Section 2.7 of the UDC Settlement Proposal inhibits in any manner the full applicability of all of the terms and provisions of the settlement proposal to the Rayne Field

sales, then such settlement proposal would unlawfully restrain and unduly discriminate against Continental at Rayne Field compared to other producers and other sales in Southern Louisiana.

To obviate the foregoing objection to the Settlement Proposal filed by UDC, the Commission should delete Section 2.7 from such Settlement Proposal in any order promulgating the terms and conditions thereof.

II.

Section 11 of UDC's Settlement Proposal contains the statement that "each producer individually represents" that the prices and other provisions of the Settlement Proposal provide incentive for exploration and development of gas reserves in Southern Louisiana. In the first place, it should be noted that this is a self-serving pleading which constitutes

[11,707]

argument which a producer might make in support of the Settlement Proposal. However, such statement is not appropriate as a term or condition of the Settlement Proposal itself which UDC would move the Commission to promulgate and make applicable by an area rate order. Furthermore, UDC, comprised of certain named distribution companies, cannot properly speak to represent what "each producer individually represents."

It is unrealistic to state to the Commission that the ceiling prices set forth in Section 3 of the Settlement Proposal filed by UDC constitute incentive for the exploration for and development of gas reserves in Southern Louisiana in the magnitude of effort which will be required to meet existing and growing consumer demand for

natural gas from this area. While Continental would support the Settlement Proposal generally, subject to modification with respect to the Rayne Field proceedings above, Continental cannot individually represent and cannot authorize UDC or any other producers to represent, by implication or otherwise, that Continental will undertake any given exploration and development responsibilities based upon the assumption that the Settlement Proposal prices constitute incentive for such exploration and development. However, any improvement in Southern Louisiana rates will afford a means to pursue any available opportunities for expanded exploratory and development activities in Southern Louisiana. In no manner should Continentals general support

[11,708]

of the purposes of the Settlement Proposal be considered an admission or assumption of responsibility for any given exploration or development efforts any more than an assurance that any such efforts as Continental might at any time undertake would elicit a specific supply of gas.

III.

Subject to the foregoing comments, Continental supports the efforts which have been directed toward settlement of Southern Louisiana area rate proceedings at Dockets AR61-2 and AR69-1 and related Southern Louisiana proceedings, and submits that the Settlement Proposal may provide a basis for disposition of all pending litigation in connection with Southern Louisiana gas prices.

IV.

In accordance with Section 1.18 of the Commission's Rules of Practice and Procedure, Continental's response herein shall be privileged in all respects.

WHEREFORE, upon appropriate modifications as outlined above, Continental submits that the Commission should find it would be in the public interest to approve the Settlement Proposal.

Respectfully submitted,

TOM BURTON,
Attorney for Continental
Oil Company

November 13, 1970.

[11,710]

[Caption Omitted]

ANSWER OF SUN OIL COMPANY TO MOTION FOR PROMULGATION OF SETTLEMENT PROPOSAL

Pursuant to Section 1.9 of the Rules of Practice and Procedure of this Commission and its Secretary's Notice herein dated November 9, 1970, Sun Oil Company (Sun) hereby answers the Motion for Promulgation of Settlement Proposal filed by the United Distribution Companies (UDC) on November 6, 1970.

I

On September 29, 1970, the Commission issued its Opinion No. 565-A on rehearing in the so-called *Rayne Field* proceeding in which it granted certificates of public convenience and necessity to producer sellers, including Sun. In so doing, the Commission attached specific conditions to those certificates. One of those conditions provides that:

> ". . . the just and reasonable rates which ultimately flow out of any settlement, or further proceedings in AR61-2, or AR69-1, should govern the level of payments in this case prior to October 1, 1968, as well as after that date . . ." (Op. 565-A, Paragraph 25, p. 11).

[11,711]

II

Section 2.7 of the aforesaid Settlement Proposal states:

> "2.7 The terms hereof do not dispose of any issues in the *Rayne Field* (Docket Nos. G-12446, *et al.*) or *Bastian Bay Field* (Docket Nos. CI66-910, *et al.*) proceedings."

Sun supports UDC's Motion and the appended Settlement Proposal provided that this section of the Settlement Proposal is considered by the Commission in the light of its disposition in the *Rayne Field* proceeding, described above. It is Sun's understanding that the terms and provisions of the Commission's Opinion No. 565-A are dispositive of the *Rayne Field* proceedings and, in the event that the Commission grants UDC's Motion and adopts the Settlement Proposal appended to said Motion, such terms and provisions are operative and of full force and effect.

III

Based upon the foregoing construction and interpretation of Section 2.7 in the context of the Commission's disposition of the *Rayne Field* proceeding in Opinion No. 565-A, Sun supports UDC's Motion and urges the Commission to adopt the Settlement Proposal appended thereto.

IV

Sun individually represents to the Commission that the ceiling prices and other provisions contained in the Settlement Proposal provide incentive for the exploration for and development of gas reserves in the Southern Louisiana Area. In

view of the nature of producing and finding hydrocarbons, it is unrealistic to expect producing companies to guarantee that this proposal will elicit a specific supply of gas; however, it is believed that this proposal will make funds available to the producing industry and create a regulatory atmosphere which should provide an incentive for a substantial increase in exploratory and developmental activities and make a major con-

tribution to bringing forth additional supplies of gas from the Southern Louisiana Area to meet the demands of all consumers supplied by this area.

WHEREFORE, Sun Oil Company prays that the Commission adopt the Settlement Proposal filed by UDC without in any way modifying or affecting its disposition in Opinion No. 565-A issued September 29, 1970 in the *Rayne Field* proceeding.

Respectfully submitted,

SUN OIL COMPANY

By /s/ Francis H. Caskin
FRANCIS H. CASKIN
Its Attorney

Stanley M. Morley
Francis H. Caskin
Louis Flax
Shannon and Morley
1700 K Street, N. W.
Washington, D. C. 20006
Attorneys for Sun Oil Company

Washington, D. C.
November 20, 1970.

[11,729]

[Caption Omitted]

ANSWER OF MOBIL OIL CORPORATION IN OPPOSITION TO "MOTION OF UNITED DISTRIBUTION COMPANIES FOR PROMULGATION OF SETTLEMENT PROPOSAL"

Mobil Oil Corporation (Mobil), a party to these proceedings, pursuant to Section 1.9 of the Commission's Rules of Practice and Procedure answers and opposes the Motion of United Distribution Companies (UDC) for Promulgation of Settlement Proposal filed in these proceedings on November 6, 1970. As grounds for its answer and opposition to the Settlement Proposal filed by UDC, and in support of certain proposed modifications thereto, Mobil shows:

I.

Mobil agrees with the UDC that evidence of record in Docket No. AR69-1 conclusively demonstrates a material and growing natural gas shortage, and that incentives are required to improve the natural gas supply inventory by encouraging a significant acceleration

[11,730]

of exploration and development. Mobil, however, shows in this Answer that the Settlement Proposal filed by UDC will not accomplish this objective. Mobil also sets forth an affirmative proposal which is a modification of the UDC Settlement Proposal[1] to offer a realistic disposition of this proceeding, consistent with the stand-

[1] Such affirmative proposal, set forth as Appendix A hereto, incorporates both provisions of the UDC proposal to which Mobil does not object, and modifications proposed by Mobil in this Answer.

ards of the Natural Gas Act, and with practical potential to accomplish the objective of improving the national supply of natural gas.

Specific defects in sections of the Settlement Proposal filed by UDC and opposed by Mobil are set forth in detail, *infra*. At the outset, it should be noted that because of those defects, Commission approval of the Settlement proposal filed by UDC would,

(1) create and result in an unlawful, unduly preferential, and unduly discriminatory rate structure, as to the past and as to the future, for independent producers in the Southern Louisiana Area in violation of Sections 4 and 5 of the Natural Gas Act;

(2) undermine the integrity of the Commission's use of guideline or interim pricing systems and the Commission's settlement policies, and inhibit future settlements in producer rate regulation;

[11,731]

(3) create competitive disadvantages for buyers and consumers in the intrastate and other non-jurisdictional markets, for buyers who are new entrants into the interstate market, for buyers with little or no refunds owed to them by area sellers, and for sellers who followed Commission guidelines and settlement policies in the past;

(4) burden the Commission, State regulatory bodies, all segments of the industry, and all affected parties and consumer interests with a cumbersome, unnecessary arrangement for "bonuses" and "refund forgiveness" which is administratively infeasible and which will result in numerous future disputes, conflicts, litigation, and proceedings before the Commission and the courts;

(5) fail to create or permit required incentives for exploration and development in a realistic, practical way,

and thus fail to achieve the desired objective of a significant acceleration in exploration for natural gas;

(6) expose the producing industry to the erosion of future inflation and the effect of that inflation on the availability of funds required for future exploratory efforts;

(7) bind the Commission and the industry to this questionable, novel, cumbersome, infeasible, rigid Settlement Proposal for an overly long period even though rapidly changing economic and financial conditions will require flexibility for prompt

[11,732]

assessment and responsive action by industry and the Commission to seek the required level of exploratory activity; and

(8) fail, for these and other reasons enumerated in this Answer, to comply with the Act's standards; fail the national requirement for an increased natural gas supply; and fail to achieve the Commission's stated desires to fulfill its own responsibility for alleviating a natural gas shortage.

Mobil, therefore, urges that the Settlement Proposal as filed by UDC be rejected unless modified as proposed *infra* by Mobil, and if so modified, that this proposal then be approved and placed in effect by the Commission.

II.

Mobil objects to Sections 1.4, 2.7, 2.8, 3.1, 3.3, 5, 8, 10 and 11 of the Settlement Proposal. In lieu of each of these sections Mobil urges the Commission to substitute, adopt, and approve the alternative sections incorporated in Appendix A hereto. In sum, those substitute provisions provide,

(1) proposed ceiling rates for existing contracts closer to current industry requirements for capital, and incentive ceiling rates for new contracts reflecting the prices currently recommended in Docket No. AR69-1 and Docket No. R-389A;

(2) for omission of the future escalation, "bonus" or

alleged incentives in such ceiling rates involving the use of the complicated formulae proposed in the UDC Settlement Proposal;

(3) for elimination of rate reductions through the device of imposing charges for transportation of liquids and liquefiable hydrocarbons;

(4) for determination of, and discharge of producers' refund liabilities by providing producers an option for payment of refunds in cash or for deductions from payments by pipelines to sellers for future deliveries;

(5) for a realistic term and moratorium on rate increases which recognizes rapidly changing economic conditions and the need for flexible Commission consideration; and

(6) for omission of a misleading and speculative representation of future exploration and development in the Southern Louisiana Area.

For the reasons set forth in this Answer, Mobil urges adoption of the modifications described in Section III below and contained in Appendix A. The proposal submitted by Mobil is consistent with the Act's standards and prohibitions of unduly discriminatory and preferential rate structures and creation of

competitive disadvantages. This proposal also offers a practical, direct, flexible and feasible approach for the industry and the Commission in seeking to achieve the objectives of improving the natural gas supply for the benefit of all consumers.

III.

The specific defects in the Settlement Proposal filed by UDC requiring modification are:

1. *Section 1.4—New Gas Reserves and Reporting Thereof.*

This definition of New Gas Reserves, together with the involved reporting procedure, is unnecessary in the Mobil Settlement Proposal.

2. *Section 2.7*

The ceiling prices and other provisions in the Settlement Proposal would apply to all jurisdictional sales in the Southern Louisiana Area without exception.

3. *Section 2.8—New Gas Reserves Records.*

The Mobil Settlement Proposal does not require the Commission to commence maintaining such a record.

4. *Section 3.1—Ceiling Prices.*

Mobil proposes a shorter moratorium of three years

on rate increases, the omission of all price escalations during that term (other than tax changes), and current ceiling prices which are more consistent with estimated current costs of natural gas, industry capital needs, and

the supply requirements already shown on the record in Docket No. AR69-1. See Appendix A, page 4.

Inadequate current ceiling prices for flowing gas and for contracts in the near-term obviously have not and will not provide funds necessary to support the needed acceleration in exploration for natural gas. The ceiling prices provided by the Settlement Proposal filed by UDC are inadequate and cannot reasonably be expected to result in a substantially increased exploration program. Escalations three years hence or contingent future "bonus" payments do not provide presently needed capital. The prices set forth in the substitute sections in Appendix A hereto are closer to the rates the record in Docket No. AR69-1 shows now are required, and to the rates shown to be required by presentations in Docket No. R-389A.

As to requirements for capital generated by revenues from flowing gas, the Commission has recognized this

[11,736]

relationship in every area rate decision to date.[2] Most recently, the Commission advised the Supreme Court:

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[2] In Opinion No. 468, *Permian Basin Area Rate Proceeding*, 34 FPC 159, 212 (1965), the Commission stated: "The price for flowing gas must also reflect the producers' need for revenues from their present sales to support future discoveries." In affirming Opinion No. 468 (*Permian Basin Area Rate Cases*, 390 U.S. 747 (1968)), the Supreme Court relevantly stated (390 U.S. at 791):

> "The Commission cannot confine its inquiries either to the computation of costs of service or to conjectures about the prospective responses of the capital market; it is instead obliged at each step of its regulatory process to assess the requirements of the broad public interests enstrusted to its protection by Congress. Accordingly, the 'end result' of the Commission's orders must be measured as much by the success with which they protect those interests as by the effective-

"If the Commission were limited to prospective changes of rates in Southeren Louisiana, there

[11,737]

would be no assurance that immediate capital needs, to the extent they are found to exist, could be fulfilled, *since rates for future sales can generate capital only gradually over a period of years.*" [3] [Emphasis supplied.]

Mobil submits that for contracts dated prior to October 1, 1968, rates of 24 cents per Mcf for Onshore and 23 cents per Mcf for Offshore are required as a minimum. Under Mobil's proposal these rates will not be increased by fixed or speculative "bonus" escalations for approximately three years, and the only possible increases during this term will be contingent upon future increases in State taxes. These rates approximate contract levels negotiated over a decade ago, and exceed

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ness with which they 'maintain. . . credit and . . . attract capital' "

This statement was cited by the Commission in Opinion No. 586, *Hugoton-Anadarko Area Rate Proceeding* (Sept. 18, 1970, p. 5).

Consistent with these principles, in Opinion No. 546, *Southern Louisiana Area Rate Proceeding*, 40 FPC 530 (1968), the Commission stated (40 FPC at 601):

"Revenues from sales of gas under contracts dated prior to 1961 continue to constitute a large portion of the total revenues derived by producers from gas sales in Southern Louisiana. The Commission desires to encourage the exploration for and development of new gas supplies. The funds to support these activities come from all gas sales, and are not restricted solely to a reinvestment of a portion of the revenues from the sale of new-gas well gas."

[3] Brief for the Federal Power Commission In Opposition, U.S.S. Ct. Nos. 669, *et al.*, O.T. 1970, *Southern Louisiana Area Rate Cases*, page 15.

the Commission's original "guideline" for the Southern Louisiana Area by approximately 1 cent per Mcf. In addition, under Mobil's proposal, funds from these rates could be available now for needed accelerated exploratory activities without the delay involved in implementation of the unduly complex and infeasible "bonus" system proposed by UDC.

As to contracts dated on and after October 1, 1968,

[11,738]

Mobil proposes a ceiling rate of 30 cents per Mcf [4] subject to prospective adjustment after Commission action in Docket No. R-389A. The UDC Settlement Proposal provides a ceiling of 4 cents per Mcf less, but that price is tied to a future fixed escalation, the speculative "bonus" provisions, and the refund-forgiveness formula. Mobil urges omission of these complexities with protection for all parties by provision for adjustment depending upon the facts developed in Docket No. R-389A. In addition, Mobil's proposed ceiling rate is closer to the levels that not only the parties have shown to be currently required by their presentations in Docket No. R-389A,[5] but also by the Staff's computation of a current "bare-bone" national cost without consideration of required incentives, and by the level shown required

[4] A firm initial rate of 30 cents per Mcf is not unprecedented. See Order dated November 3, 1970, Docket No. CI71-219, issuing a Certificate of Public Convenience and Necessity to Humble Oil & Refining Company for a sale in Florida. An incentive price of 30 cents per Mcf is needed in Southern Louisiana as well as in Florida.

[5] Excerpts from statements filed in Docket No. R-389A are attached hereto as Appendix B.

by the presentation of the Staff Witness Khazzoom in Docket No. AR69-1.[6] Mobil, therefore, proposes the 30 cents per Mcf incentive level to be effective upon Commission approval in this case, which should attract immediate investment of presently available funds for a greatly accelerated exploration program for natural gas.

An adequate current incentive exploration program requires the combination of (1) a flowing gas ceiling price which affords current generation of required funds by all area sellers; with (2) a ceiling price for recent and new contracts available to all sellers which recognizes current costs and revenue requirements. The proposed Mobil ceiling prices should attract capital and provide adequate funds for the needed accelerated exploratory effort for new natural gas reserves. Mobil's proposal contemplates Commission review in Docket No. R-389A and a reassessment of such price levels by all parties and the Commission three years hence in the light

of the economic, financial, and supply situation then existent and foreseeable.

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[6] Dr. Khazzoom shows (Exh. No. 46, p. 226, Table XIII. 14) that in order to achieve a discovery to production (d/p) ratio of 0.3 in 1975 and 1980, price increases from 14 cents to 20 cents over 1969 levels would be required. Dr. Khazzoom shows the 1969 initial service rates in Southern Louisiana at 18.14 cents (Federal Domain) and 19.61 cents (State Domain) at 14.73 psia. Ceiling prices in Southern Louisiana thus must be raised to 32.14 cents in the Federal Domain, and 33.61 cents to 39.61 cents per Mcf in the State Domain in order to achieve the recent rate of new discoveries to production. While Mobil does not subscribe to the formulations of Dr. Khazzoom's equations or to all the economic assumptions upon which they are based, Mobil does agree that the level of exploratory activity is responsive to price.

[11,740]

Answer of Mobil Oil Corporation

5. *Section 3.3.2—Contingent Escalations of Ceiling Price*

In contrast to the incentive ceiling rates proposed by Mobil, the UDC proposal (Section 2.8) calls for the Commission to establish "new gas reserves records," reflecting new reserves committed by producers for refund credits (Section 8.2.2) and for credits toward meeting the industry-wide level of new reserves for industry-wide price escalations or "bonuses" (Section 3.3.2).

Section 3.3.2, entitled "Contingent Escalations of Ceiling Prices," provides for a "bonus" of one-half cent (0.5¢) per Mcf to be added to the ceiling prices for contracts dated prior to October 1, 1968, for all producers when the "producing industry" has committed new gas reserves to the jurisdictional market in the amount of seven and one-half (7.5) trillion cubic feet in the Southern Louisiana Area. Likewise, an additional "bonus" of one-half cent (0.5¢) per Mcf would be added to the ceiling prices of the pre-October 1, 1968 jurisdictional contracts of all producers when the new gas reserves commitment reached eleven and one-quarter (11.25) trillion cubic feet, and an additional one-half cent (0.5¢) per

[11,741]

Mcf would be added to the ceiling prices when the new gas reserves committed reached fifteen (15) trillion cubic feet in the Southern Louisiana Area. However, new gas reserves committed by a producer would first be applied against the producer's refund obligations, and a producer would have to discharge his refund obligation before his new gas reserves would be added to the new gas volumes being accumulated for the "bonus" to be added to the ceiling prices for all the producers in the Southern Louisiana Area.

This complicated arrangement is not an incentive system. It is discriminatory in concept and would create in-

equitable wind-falls for some without actually offering a realistic incentive to many producers. An example best illustrates this effect:

(1) Assume Producers A, B, and C each have 200 BCF per year sales in the area under contracts dated prior to October 1, 1968;

(2) Refund obligations are:

Producer A—None
Producer B—$10 million
Producer C—$ 5 million

(3) Assume that under the UDC formula, at the

[11,742]

end of two years the industry has "earned" the first 0.5¢ per Mcf increase for flowing gas; at the end of three years the industry has "earned" the second 0.5¢ per Mcf increase; and at the end of four years the industry has earned the third 0.5¢ increase;

(4) During this period of time, Producer A contributes 1 TCF to the interstate market; Producer B contributes 1 TCF to the interstate market; but Producer C does not participate in further exploration and contributes nothing;

(5) Nevertheless, under the UDC formula, the benefits to these three producers would be

Producer A—Shares in the 1.5¢ industry increase in flowing gas rates; all of his 1 TCF new reserves commitment would be counted

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to earn the industry increases; and he would receive no additional financial benefit from his commitment of 1 TCF.

Producer B—Shares in the 1.5¢ industry increase in flowing gas rates; *but* none of his 1 TCF commitment is counted toward earning the increase for the industry which he nevertheless shares in; *and* he would receive an additional financial benefit of $10 million through forgiveness of his refund obligation.

Producer C—Shares in the 1.5¢ industry increase in flowing gas rates; *but*, he has spent no funds on exploration and added nothing to earning the industry increases he shares in; *and*, at the end of the

[11,744]

five-year period he will have received an additional $6 million by sharing in the industry increases, which he can use to discharge his $5 million refund obligation and still have $1 million received on the basis of industry effort and not his own.

(6) In sum, the incentive on an industry basis is only an illusion. Unequal, discriminatory and preferential incentives and benefits actually underlie the proposal. The proposal rests on the idea of "Let George Do It" as far as initiating exploration and making actual commitments to earn increases on an "industry" basis.

An analysis of the "bonus" proposal is set forth in the Answer of Texaco Inc. The alternative proposal of Texaco still includes the problems of speculation, deferral of incentives, and complex record-keeping. Their proposal for an incentive based on individual company effort, rather than the "industry" formula of UDC, is more

equitable than the UDC proposal, and would more likely achieve intended results since it takes into account that commitment of funds to exploration is a function of individual, *not* industry, decision.

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Mobil, therefore, urges the Commission to modify Section 3 of the Settlement Proposal by substituting the Section 3.1 set forth at pages 4 and 5 of Appendix A hereto, by striking Section 3.3, and by renumbering Sections 3.4 (Tax Changes) and 3.5 (Off-shore Gas Delivered by a Producer Onshore) as Sections 3.3 and 3.4.

6. *Section 5—Transportation of Liquids and/or Liquefiable Hydrocarbons.*

The provisions of this Section of the Settlement Proposal filed by UDC should be stricken. Mobil urges that producer prices should not be reduced through the device of imposing charges for transportation of liquids and liquefiable hydrocarbons. The Mobil proposal does not provide any fixed transportation charge. This is a matter that should be the subject of negotiation between the producer and the transporter based on the specific fact situation existent at the time of negotiation. Existing arrangements and such future arrangements then may be reviewed by the Commission at the time of its review of applications for certificates filed under Section 7.

7. *Section 8—Refunds and Disposition Thereof.*

All of the provisions of Section 8 of the Settlement Proposal filed by UDC should be stricken, and the language set forth

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at pages 13-17 of Appendix A hereto substituted therefor.

In Section 8, the arrrangement proposed by UDC sets out a complex, cumbersome refund-forgiveness formula, tied to a preferential "bonus" incentive system under Section 3.3, which is both unlawful and administrative infeasible. In lieu thereof, Mobil proposes a simple settlement and refund system under which,

(1) all refund liabilities covered by the Commission order in these proceedings would be computed on a rate schedule by rate schedule basis, applying the ceiling prices and reduction percentages under the *Grigsby* formula as set forth by Mobil in Section 7 on pages 13 and 14 of Appendix A hereto;

(2) sellers owing refunds would have the option, on a rate schedule by rate schedule basis, to make cash refunds to the purchaser at a time to be fixed by the Commission, or to notify the purchaser and the Commission that within a five (5) year period following the Effective Date the purchaser should deduct 3 cents per Mcf from deliveries under existing contracts with the purchaser until the refund liability, including interest, is discharged; and

(3) the sellers who elect the deduction option, in the event current and future deliveries under existing contracts with

[11,747]

the purchaser to whom refunds are owed are insufficient to complete the discharges of refund liabilities, are required to pay the balance in cash to such purchaser.

These provisions are far more consistent with the Act's standards, with equitable administration of the Act, and do not interfere with competitive conditions existent among both buyers and sellers. The refund-forgiveness arrangement proposed by UDC does not meet such tests,

and has the additional disadvantages of complexity, cumbersome administrative procedures, and little promise of any meaningful incentive or corrective effect upon the supply situation.

First, the combination of this complex, preferential refund-forgiveness formula and bonus system of Section 3 is unnecessary and is not a practical incentive. If the Settlement Proposal is addressed to incentive, it operates only as the result of the involved combination of current price, future escalations, future possible bonuses, and future refund-forgiveness made available on a selective basis, with the preference running largely to those area sellers who made little or no refunds in the past and who have collected rates higher than Commission guidelines and "in-line" prices. Mobil proposes that present incentive be included in currently available ceiling prices

[11,748]

for *all* sellers; that these ceiling rates control for a realistic future period without fixed price escalation; and that these immediate incentives be accorded equally to *all* sellers. Further, those who have accrued refund liability would be given the option of discharging their indebtedness by payment in cash or by interim reduction of revenues. Payment of an obligation under the latter option allows a producer to divert present funds from his reserve account to gas exploration and also provides a convenient, practical way to discharge his refund obligations.

Under the arrangement proposed by UDC, a severe disruption of the competitive situation among buyers and sellers is inevitable. As to sellers, Mobil and many other producers, have, in the past decade, made large cash refunds and reduced rates applicable for many years in

compliance with Commission orders and policies.[7] These steps have reduced cash available for operations and annual revenues available for reinvestment, including exploration and development programs. Mobil and others similarly situated,

[11,749]

nevertheless, have competed during the past decade with other producers who did not follow the Commission policies as to such settlements and immediate rate reductions. As a result, today the combination of the bonus system under Section 3.3 and refund-forgiveness under Section 8 of the arrangement proposed by UDC operates to the detriment of Mobil and others similarly situated. The non-settling beneficiaries, over the past decade, had full use of funds collected subject to refund, and now, under the arrangement proposed by UDC, the same beneficiaries would receive preferential status in the application of funds to exploration and development and in eligibility for the "bonus" payment. The arrangement proposed by UDC also would result in an unequal rate structure, once the bonus system became operative, and the system and results would be unduly preferential and unlawful under the Act. These results are also particularly arbitrary because the operative effect is to reward those who abstained from the Commission's settlement program, and to impose adverse effects upon those who followed the Commission's guides.[8] If

[7] See tabulation in Appendix C hereto as to refunds and *per annum* rate reductions by major producers.

[8] The ten-year record of Commission encouragement of settlements, refunds, and reduction of rates to the guidelines is documented in *Tidewater Oil Co.*, 27 FPC 1267, 1269-1270 (1962); *Texaco Inc.*, 30 FPC 1631 (1963); *Socony Mobil Oil Co., Inc.*, 31 FPC 1101 (1964); *Humble Oil & Refining Co.*, 32 FPC 49 (1964); *Sunray DX Oil Co.*, 33 FPC 128 (1965); *Pan American Petroleum Corp.*, 35 FPC 502 (1966).

[11,750]

such rewards were to await those who so abstain from any future settlement of individual dockets, limited proceedings under Sections 4 and 7 of the Act, or other controversies, future settlements of any Commission proceedings would be highly unlikely.

An example illustrates a part of this effect of the refund-forgivness arrangement proposed by UDC and also will serve to illustrate a similar disruptive effect on competitive positions of buyers in the natural gas market:

(1) A new gas sales contract is executed by a producer who has a refund obligation of at least $5,000,000 to a given pipeline;

(2) Five hundred Billion Cubic Feet of natural gas is committed to the given pipeline at the ceiling price of 26 cents per Mcf set out in Section 3.1 of the UDC Settlement Proposal;

(3) Deliveries during the first year will be 1/20 of 500 Billion Cubic Feet and when sold at 26 cents, the seller receives $6,500,000;

(4) In addition, under the refund-forgiveness formula the seller receives a "refund credit" for committing the 500 Billion Cubic Feet which equals $5,000,000;

[11,751]

(5) So that, in the first year, the initial value of this sale to the seller is $11,500,000.

By contrast, a producer who has no refund obligations making an identical sale would receive a present value of only $6,500,000. Further, the reserves of such a producer would be counted toward the bonus price incentive to obtain price increases shared by all producers, whereas

the producer with the refund obligation will receive the same price increases without making any contribution to the reserve requirements to earn the "bonus" increases.

This is a patently discriminatory rate structure, adverse to the competitive posture of those who settled in the past, to their present cash flow, and to their relations with lessors and royalty owners. The result cannot be reconciled with standards of Sections 4 and 5 of the Act.

In addition, under the UDC refund-forgiveness arrangement, intrastate purchasers, industrial purchasers, new pipeline entrants in the interstate market, metropolitan area distribution companies seeking commitment of new supplies, and interstate pipelines to whom substantial refunds are not owed would

[11,752]

be at a competitive disadvantage. The balloon values to the producer with a refund obligation in the initial years of a sale create a situation whereby new gas reserves will logically be offered to the pipeline buyer to whom the largest refunds are owed.[9] A competitive advantage will be created for such pipelines to whom refunds are owed because at least 50 percent of any new gas reserves must be offered to the pipeline company entitled to refunds for the reserves to qualify for refund credit against the producer's refund obligation. The attractiveness of the initial inflated value would divert new reserves to such buyers, to the disadvantage of new entrants, pipelines without substantial refunds owed to them, buyers and consumers in the Louisiana local market. Their best hope of competing with the pipelines to whom refunds are

[9] The wide differences in refunds owed to pipelines in the Southern Louisiana Area under Opinion No. 546 rates are set forth in Appendix D hereto.

owed would be to offer substantial cash bonuses in the initial years of delivery or otherwise face a substantial impact of exclusion from access to any new reserves found in Southern Louisiana in the near-term future. Unless sanctioned by the Commission, the capability of offering such huge bonuses would be limited to non-jurisdictional purchasers. Other prospective purchasers are virtually excluded, most particularly

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jurisdictional pipelines to whom few refunds are owed. The effect also would be to deny customers of such pipelines access to newly-discovered reserves. Before all of these results are approved, the Commission itself should review most carefully the legality and propriety of such a discriminatory and preferential arrangement.

An incentive system immediately available to *all* entrants, as either sellers or buyers, and with a straightforward, simply expressed adequate ceiling price, does not present these impediments or collateral questions. A simplified refund discharge formula such as is proposed by Mobil, therefore, should be substituted to reach a lawful, proper result in disposition of the refund question in this case.

In addition, the Commission cannot overlook the administrative burden and impracticalities the UDC-proposed bonus-and-refund credit system under Section 3.3 and Section 8 would create. For example, under the workings of these two sections, the Commission and its Staff would be interjected into and responsible for, at least some seven years of:

(1) passing on controversial initial reserve determinations to arrive at proper "credits" for dedication;

(2) resolving disputes as initial estimates may change or be modified;

(3) referring disputes over whether the second offer to a pipeline is, in fact, "substantially" the same as an offer turned down by a pipeline which is accorded the preferential right of first refusal on new reserves;

(4) passing on innumerable petitions for special relief as to compliance, non-compliance, or bona fide grounds for extending an individual producer's period of eligibility for the refund credit system;

(5) hearings, decisions, and judicial review on disputes over individual and indust y performance under uncertain "standards" and a complex, complicated credit system.

This arrangement proposed by UDC is analogous to a similar effort in railroad rate regulation to "pool" credits on an industry basis and to apportion funds in relation to individual performance that proved impossible to administer after 13 years of chaos.[10] It is also significant that this arrangement and

attendant complexities are wholly unnecessary and actually inconsistent with the need for practical incentives. Investment decisions and commitments are made on a company basis, not on the basis of whether the industry as a whole has committed a given quantity of reserves at a certain point in time. Each company management also should not have the added burden of checking a "new gas rese. ves" record maintained in the Commission before reaching decisions on investment opportunities.

[10] See discussions of the ill-fated 13-year experiment to "recapture" and "reapply" pooled "excess earnings" in the railroad industry between 1920 and 1933, in *St. L. & O'Fallon Ry. Co.* v. *United States*, 279 U.S. 461; *Aitchison "Fair Reward and Just Compensation, Common Carrier Service"*, 1954, pages 30-31.

Yet, under the UDC proposal, a massive controversial system would be set up for the principal benefit of a few, while the desired increase in exploration and development must be geared to individual company assessment of the incentive actually available to that company.

An additional disadvantage is that the rate structure under the Settlement Proposal filed by UDC provides no fixed basis for payment of royalties. By provisions of leases and of Opinion No. 562, royalty payments are geared to a cent per Mcf price, which under regulation is so expressed in cents per Mcf as an "applicable area rate." Yet, the workings of the Settlement Proposal would be such that for the period after October 1, 1968, which is tied to the estimated $150,000,000 total refund figure, rates, rate structures and revenues for given sales are not defined, fixed or known. This

[11,756]

can but result in further controversy before the Commission and the courts as to royalty payments. The same prediction is equally applicable to royalty treatment where the "bonus-refund credit" combination produce "values" to the lessee that may not be identifiable with properties that generated past refund liabilities.

All of these discriminatory, controversial results—involving sellers, buyers, state and federal interests, royalty owners, new entrants, existing purchasers, and consumers—can be avoided by substituting the option as to payment of refunds proposed by Mobil. The Act would be equitably applied under this solution; "policing" is simple; obligations to others are easily identifiable; those to whom refunds are due are paid by those who actually owe them; and true incentives are made available to *all* producers, without the dilution proposed to benefit a few.

Mobil, therefore, urges that its proposed substitution of Sections 3 and 8 be adopted. In the alternative, Mobil urges the Commission to adopt the other provisions proposed by Mobil and to set the various refund-forgiveness proposals for further hearing, consolidated with a similar refund-forgiveness proposal by Phillips Petroleum Company in Docket No. AR64-1.

[11,757]

8. *Section 10—Term.*

Mobil proposes a term and moratorium of three years from the date increased ceiling rates provided in Mobil's modification of Section 3 are approved and placed into effect.

The Settlement Proposal filed by UDC calls for an unrealistic term of six years for contracts dated prior to October 1, 1968, and seven years for contracts dated on or after October 1, 1968. Even with iterim escalations, these terms are rigid, non-responsive and unsupportable, since, in fact, accu. ate economic projections as to required rates cannot be made for such long periods on this or any other record. This inflexible rigidity, therefore, cannot be reconciled with the Act's standard for continuous just and reasonable rates, with the Commissions duties, or with needs of the industry or the consuming public in a dynamic, rapidly changing national economy.

Long-term, inflexible pricing policies between 1959 and 1969 are a reason for the present supply crisis. During the 1960's prices were not responsive to changes in financial requirements and demands. Over the past ten years, inflation has mounted at the rate of 2.3 percent per year, and since 1965, the rate has been 3.6 percent per year.[10a]

[10a] Calculated from Commerce Dept. Implicit Price Index (Gross National Product) as shown in Exhibit 25, page 25, Docket No. AR69-1, Southern Louisiana Area Rate Proceeding.

[11,758]

There is no evidence in this proceeding that any different "stability" of costs will be achieved between 1970 and 1977. The predictable result of a repetition of rigid, inflexible long-term pricing, therefore, will be the same or an intensified supply crisis five or seven years hence for the domestic producing industry, and for all who are dependent upon the industry's financial well-being for natural gas supplies. Examples of the errors of such rigidity on economic predictions are already known to the Commission:

(1) In this case, numerous parties have called attention to rapidly changing economic conditions in only the two years between issuance of Opinion No. 546 on September 25, 1968, and September 1970;

(2) In the Appalachian and Illinois Basin Area Rate Case, Docket No. R-371, *et al.*, between the Commission's Notice of Proposed Rulemaking issued on October 16, 1969, and issuance of Order No. 411 on October 2, 1970, circumstances changed so drastically that the Commission (a) prescribed new gas prices for the Appalachian Basin subareas two to four cents per Mcf over prices proposed in the Notice, and (b) adjusted upward by three cents per Mcf the single area ceiling price applicable to sales from the Illinois Basin Area.

[11,759]

(3) In Opinion No. 586, the Commission noted the rapidly changing economic conditions between issuance of the Examiner's Decision and the Commission's own decision. Thus, the Commission stated (Opinion No. 586, p. 12):

"Changes in the economic climate—evidenced, for example, by persistent inflationary trends in the gen-

eral economy and unusual liquidity pressures on corporate enterprises—have made it apparent that the 12 percent rate of return found adequate by the Commission in 1965 *(Permian)* and 1968 *(Southern Louisiana)* should be adjusted upward. Compared with prime rates of 6 percent to 6¾ percent charged by commercial banks during 1968, the prime rate was raised to 8½ percent in June 1969 and has been at 8 percent since March 1970. Bond interest rates have experienced similar and at times much sharper increases as a result of continued heavy demands for long-term financing."

In the *Southern Louisiana Area Rate Cases*, 428 F.2d 407 (1970), the Fifth Circuit also affirmed a five-year moratorium and an "indefinite" moratorium only with great reluctance. There, the Commission had made findings tied to predictions (now known to be erroneous) of cost stability. Here, a longer moratorium would be imposed with no such support, and at a time when continuous industry and Commission review and response to economic changes and demand changes are imperative.

[11,760]

The proposed term thus is unsupported and adoption would be detrimental to both producing and consuming interests.

9. *Section 11—"Future Exploration and Development in the Southern Louisiana Area"*

The Settlement Proposal filed by UDC includes a section entitled "Future Exploration and Development In Southern Louisiana Area." Apparently, this is supposed to be a representation as to the "incentive" provided by the ceiling prices and "other" provisions of the Settlement Proposal, including an expression of a belief as to the

effect funds made "available" will have upon supply and demand. The phrasing is careful and should not mislead the reader. There is no commitment by any natural gas producer to spend any amount for natural gas exploration, and there is no representation by the other components of the natural gas industry that the ceiling rates in the UDC proposal offer adequate incentives for a greatly accelerated exploration program by the natural gas producers.

The representation in the UDC Proposal does not, and cannot, guarantee an adequate supply of natural gas, and it does not, and cannot, represent to the Commission that Commission approval of the UDC Settlement Proposal can relieve either the Commission or the industry of their respective responsibilities for natural gas supply.

[11,761]

In Mobil's view, the inadequacies, defects, preferential nature, and collateral effects of the UDC Proposal are such that Commission approval would be grievous error and not in accord with the Commission's own duties under the Act.[11] Mobil has, on prior occasions, called attention to the fact that no given price can guarantee exploration and development.[12]

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[11] As the Supreme Court stated in *Permian*, 380 U.S. at 792, the Commission is bound to state "fully and carefully . . . its assessment of the consequences of its orders for the character and future development of the industry." In *Southern Louisiana*, the Fifth Circuit reemphasized this duty (428 F. 2d at 443-444): ". . . [I]t [the Commission] should estimate the supply that a given rate will elicit [120]

"[120] * * * it is the Commission's *responsibility* to make a prediction of this nature as best it can." (emphasis by the Court)

[12] The Fifth Circuit erroneously referred to such candid statements as not helpful (428 F. 2d at 444). However, the Commis-

That situation has not changed. An adequate exploration and development program is dependent not only upon incentive prices, but also upon:

(a) Availability of leases;

(b) Limited availability of offshore rigs and related service equipment;

(c) Time required to define field;

(d) Time required to design drilling and production facilities;

(e) Limited contractors for platform fabrication and installation;

(f) Certificate delays on pipeline applications to connect reserves;

(g) Limited mill space for manufacturing pipe;

(h) Limited pipeline contractors and equipment for deep water operations;

(i) Work season limitations;

(j) Limited investment funds for all phases if greatly accelerated program is required.

The Settlement Proposal filed by UDC at best may

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sion subsequently recognized that Mobil is correct in its expressions of the difficulty of such predictions and of the imprecision of any estimate that a *given* expenditure will result in a *given* quantity of newly discovered natural gas. In Opinion No. 586 the Commission thus stated (p. 19):

"In determining area rates we have been charged by the Court of Appeals for the Fifth Circuit with predicting the probable demand for gas, determining the desired level of supply and attempting to determine a price which will elicit that level of supply. *Southern Louisiana Area Rate Cases, supra.* The court noted that this task was difficult, but said it must nevertheless be attempted by the Commission."

[11,763]

provide an adequate incentive for only a few of the principal beneficiaries of its discriminatory preferential bonus and refund-forgiveness provisions (see tabulation in Appendix E hereto). However, it does *not* do so for the producing industry in general, and approval of such therefore could not be depicted as a step solving the natural gas shortage, or as placing the burden for any continued existence of that shortage on producers in the Southern Louisiana Area. This is particularly true for those who are *not* the beneficiaries of the special treatment accorded by the arrangement proposed by UDC.

Upon analysis, Mobil must conclude that the UDC proposal offers preferential forgiveness of refunds in exchange for less than adequate current and future area rates. The UDC proposal will not provide the incentive for an expanded exploration program needed to find new gas reserves. The UDC proposal is not in the public interest.

Mobil thus urges the rejection of such an ineffective, cumbersome, impractical "solution" to a national natural gas supply crisis. Mobil does not represent that the alternate Settlement Proposal set forth in Appendix A to this Answer will solve that crisis. Mobil does, however, submit that a settlement as proposed by Mobil (1) can be sustained as consistent with the Act's standards; and (2) can

[11,764]

be found by the Commission to provide adequate in- producers in the area. This is the necessary first step toward solution of the supply shortage by the Commission and the industry. The Commission should maintain continuous review of rates and make changes prospectively

as required in Docket No. R-389A and upon expiration of the term set forth in Section 9 of Mobil's Settlement Proposal.

CONCLUSION

For the foregoing reasons, Mobil opposes the Settlement Proposal filed by UDC and urges the Commission (1) to issue an order adopting the Settlement Proposal set forth in Appendix A hereto, or alternatively, (2) to issue such an order approving all provisions therein except those relating to refunds, and setting the issue of refunds for further hearings with the motion filed by Phillips Petroleum Company seeking relief from refunds in Docket Nos. AR64-1, *et al.*

Dated this 4th day of December, 1970.

Respectfully submitted,

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[11,766]

APPENDIX A

SETTLEMENT PROPOSAL FOR SOUTHERN LOUISIANA AREA

SECTION 1. DEFINITIONS.

For the purposes hereof, the following definitions apply.

1.1 *Associated Gas* is natural gas which in its natural state was found in contact with crude oil in a reservoir.

Dissolved Gas is natural gas which is found in solution with crude oil in the reservoir.

Non-Associated Gas is natural gas which in its natural state was not found in contact with crude oil in a reservoir.

1.2 *Southern Louisiana Area* is as defined in Opinion Nos. 546 and 546-A.

Onshore is that part of the Southern Louisiana Area in which gas is produced subject to the jurisdiction of the State of Louisiana with respect to production, severance, gathering or similar taxes.

Offshore is that part of the Southern Louisiana Area seaward from the Onshore Area.

Disputed Zone is that part of the Southern Louisiana Area as to which there is a dispute between the State of Louisiana and the United States of America as to whether said area lies within the taxing jurisdiction of the State of Louisiana.

1.3 *Effective Date* is the first day of the calendar month following the issuance of the Commission's order incorporating the terms and conditions herein contained.

SECTION 2. MISCELLANEOUS PROVISIONS.

2.1 *Contract Price.*

Notwithstanding any other provision herein contained, no rate may exceed the total price including any adjustments to such price as allowed by contract.

2.2 *Associated, Dissolved, and Non-Associated Gas.*

Since associated and dissolved gas in Southern Louisiana have pressure characteristics similar to non-associated gas, there will be no distinction between associated, dissolved, and non-associated gas or residue gas derived therefrom for any purpose hereunder, except as provided in the sales contract and Section 2.6. Each will be governed by the same ceiling prices and certification prices.

2.3 *Quality.*

Quality will be governed by the sales contract and, except for heating value, will not affect the ceiling prices and refund floors for gas. The ceiling prices set out in Sections 3 and refund floors set out in Section 7 shall be adjusted upward or downward by

the Btu adjustment as provided for by Opinion Nos. 546 and 546-A. For the purpose of the refund computations under Section 7 hereof, the Btu content applicable to each producer's rate schedule shall be that reported on its Quality Statement filed pursuant to Opinion Nos. 546 and 546-A.

2.4 *Delivery Point.*

The delivery point standard will be that set forth in Opinion Nos. 546 and 546-A. The ceiling prices in Section 3 and the refund floors set out in Section 7 shall be adjusted consistent therewith.

2.5 *Unit of Measurement.*

The unit of measurement will be one cubic foot measured at 15.025 psia at 60° Fahrenheit.

2.6 *Take or Pay Provision as to Non-Associated Gas.*

From and after the Effective Date, non-associated gas which has been paid for but not taken may be taken or "made-up" in the manner provided by the contract at any time within five (5) years (or longer if permitted by the contract) from the end of the contract year in which the obligation to take occurred; *provided, however,* the purchaser must take the gas within the term of the contract under which the gas is being purchased or the right to take shall lapse upon

termination of the contract unless the contract otherwise provides.

SECTION 3. CEILING PRICES.

3.1 *Ceiling Prices in General.*

Commencing with the Effective Date, the ceiling prices per Mcf, subject to adjustment pursuant to other provisions hereof, applicable to all jurisdictional deliveries made under contracts subject hereto for sales of gas produced in the Southern Louisiana Area are as follows:

(a) Contracts Dated Prior to October 1, 1968:

Onshore	24.0¢
Offshore *	23.0¢

* Subject to Section 8 hereof, Onshore ceiling prices will apply to Disputed Zone gas.

(b) Contracts Dated On or After October 1, 1968: **

Onshore	30.0¢
Offshore	30.0¢

** Includes contracts set out in Appendix B of Opinion No. 546-A and any other existing contracts ultimately treated in a similar fashion by the Commission, prospectively from the date of the Commission's order regarding such contract.

3.2 *Newly Discovered Reservoirs on Committed Acreage.*

If a new reservoir is or was discovered on or after October 1, 1968, on acreage committed by a contract dated prior to October 1, 1968, the ceiling price applicable to the gas produced from such new reservoir shall be the ceiling price applicable to contracts dated on or after October 1, 1968. The method of establishing that a new reservoir has been discovered and determining the volume of gas produced from such reservoir shall be that presently set out in Section 2.56(f)(2) of the Commission's Rules of Practice and Procedure.

3.3 *Tax Changes.*

The ceiling prices specified above shall change upward or downward to reflect eighty-seven and one-half percent (87.5%) of any new or amended state or Federal production, severance, gathering or similar taxes, or eighty-seven and one-half percent (87.5%) of any changes in

the existing rates of such taxes becoming effective after October 1, 1970.

3.4 *Offshore Gas Delivered by a Producer Onshore.*

If gas produced Offshore is delivered, at the sole cost of the producer, inland from the so-called "Chapman Line" (as delineated on the map attached as Exhibit A to an agreement between

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the United States and the State of Louisiana, dated October 12, 1956, pertaining to the Louisiana Tideland dispute), the ceiling price for such gas shall be the applicable Offshore price plus one cent (1¢) per Mcf.

Notwithstanding the above, if on a petition for special relief the Commission finds that the cost to the producer of bringing the Offshore gas inland from the Chapman Line exceeds one cent (1.0¢) per Mcf, the ceiling price to be applied prospectively will be the Offshore ceiling price plus the reasonable charge as determined by the Commission for bringing such gas to the delivery point inland from the Chapman Line.

SECTION 4. IMPLEMENTATION OF RATE CHANGES.

4.1 As to any change in rate required or permitted as of the Effective Date, each producer within twenty (20) days from the date of the Commission's order promulgating the terms hereof (a) shall file the data presently required by Section 154.9(f)(1) of the Regulations Under the Natural Gas Act or FPC Form 280 as a supplement to each of its Rate Schedules reflecting all rate decreases required under the applicable ceiling price provided for herein, to become effective as of the Effective

Date; and (b) may increase its rates to the applicable ceiling price provided herein to

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the extent permitted by contract, by filing the data presently required by Section 154.94(f)(1) of the Regulations Under the Natural Gas Act or FPC Form 280 as a supplement to each of its Rate Schedules to become effective sixty-five (65) days from the date of the Commission's order promulgating the terms hereof. Any producer rate increase which is not filed within such twenty (20)-day period shall not become effective until ninety (90) days from the date of such filing.

4.2 As to any change in rate resulting from the operation of Section 3.3 hereof, each producer may increase its rates to the applicable ceiling price provided herein to the extent permitted by contract by filing supplements to its Rate Schedules at least sixty-five (65) days prior to the date such change in rate is proposed to be made effective.

4.3 As to any change in rate which by the terms of the contract occurs subsequent to the Effective Date, each producer may file its supplement to its Rate Schedule at least sixty-five (65) days prior to the date such change in rate is proposed to be made effective; *provided, however*, such proposed rate shall not exceed the applicable ceiling price provided herein.

4.4 In order to implement any rate increase permitted hereunder, the producer shall file a supplement to the applicable Rate

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Schedule subsequent to the date of the Commission order promulgating the terms hereof, and if such

supplement provides for a rate greater than that being collected under such Rate Schedule at the time of such filing, such rate increase shall not be applied to any delivery made prior to the effective date of the change in rate as provided herein.

4.5 In the event the Commission during the term provided in Section 9 hereof suspends, beyond the date upon which it was to become effective, a rate increase permitted by contract and filed in accordance with the foregoing provisions of this Section 4 which did not exceed the applicable ceiling price then in effect hereunder, the producer shall be free of the ceiling price limitation herein as to such contract; *provided, however*, suspension of the proposed increase in rate for one day solely because of a dispute as to whether the proposed increase is authorized by the contract or the provisions hereof shall not operate to free the producer of the ceiling price limitation herein.

4.6 Pipelines which as of the date of the Commission order promulgating the terms hereof, are not otherwise authorized to track rate changes of their suppliers resulting from changes in the price of gas from the Southern Louisiana Area shall be required to reflect in their rates the jurisdictional portion of all supplier rate reductions applicable to Southern Louisiana, and shall be permitted

to increase their rates solely to reflect the jurisdictional portion of any supplier rate increases resulting from the application of the provisions hereof, without suspension except to the date, if any, that such supplier rate increase is suspended, and without refund obligation except to the extent of the jurisdictional portion of any refunds actually received from such sup-

pliers as a result of such rate increases; *provided, however*, that if the rates then being charged by a pipeline are being collected subject to refund, this provision will not diminish the refund obligation otherwise applicable to such rates but such obligation will be in addition to any refunds which may arise hereunder. The rate reductions required and the rate increases authorized shall not be made until the unit amount computed under Section 4.7(c) below is five one-hundredths of one cent (.05¢) per Mcf or more, nor at any time less than ninety (90) days following the prior tracking increase or decrease hereunder. The effective date of any rate adjustment hereunder shall be not less than thirty (30) days after filing but not prior to the date upon which its supplier's rate adjustment becomes effective. The Commission's order promulgating the terms hereof is to waive the provisions of Section 154.63 of the Regulations under the Act as to rate adjustments provided for herein upon condition that the purchaser filing

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a rate adjustment hereunder submits working papers satisfactory to the Commission which show the computation thereof concurrently with the filing.

4.7 All pipeline rate adjustments filed pursuant to the provisions of this Section 4 shall be computed by:

(a) Determining the difference between the supplier rate in effect prior to its change in rate (base price) and the new supplier rate under each applicable Rate Schedule;

(b) Multiplying such difference by the actual volume of gas received from such supplier under such Rate Schedule during a period of twelve (12) consecutive months ending not less than

thirty (30) nor more than ninety (90) days prior to the date the pipeline files its revised tariff sheets; and

(c) Dividing the net aggregate amount of such increases and decreases by the pipeline's total sales volume (exclusive of the pipeline's wellhead sales, if any) for the same twelve (12)-month period.

The amount per Mcf so computed shall constitute the unit change in the pipeline's jurisdictional rates, to be reflected in the commodity component or non-part rate to the nearest one-hundredth of one cent (.01¢) as the case may be, in accordance with the other provisions hereof.

The tracking provisions of these Sections 4.6 and 4.7

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shall terminate as to any pipeline upon the effective date of Commission authorization of a tracking (or other purchased gas adjustment) procedure for such pipeline, if such procedure is applicable to the volumes of Southern Louisiana gas purchased by the pipeline from all of its suppliers.

4.8 The jurisdictional portion of all cash refunds received by the pipelines (1) under the provisions of this Section 4; and (2) under Section 7.1(b) hereof, unless separate flow-through obligations are imposed by the pipeline's individual company tracking authorizations shall, to the extent attributable to gas supply costs reflected in pipeline tracking increases, be refunded to the pipeline's jurisdictional customers as ordered by the Commission.

4.9 If on the Effective Date hereof, a pipeline is operating under a tracking procedure which is applicable to the volumes of Southern Louisiana gas purchased by the pipeline from all of its suppliers, authorized by the Commission in another proceeding, such tracking provision shall continue in effect as to volumes of gas from the Southern Louisiana Area during the term hereof unless modified or terminated by the Commission.

SECTION 5. CERTIFICATE AUTHORIZATIONS.

Subject to Section 8 hereof, all sales in the Southern

Louisiana Area under producer gas sales contracts for which applications for permanent certificates were pending before the Commission as of November 1, 1970, shall be permanently certificated at the contract prices agreed to by the seller and purchaser up to the applicable ceilings specified herein and without price conditions which would reduce contractually authorized prices below the ceiling prices set forth in Section 3, as adjusted herein. This Section shall operate prospectively only.

SECTION 6. PRODUCER RIGHTS FOLLOWING THE EXPIRATION OF CONTRACTS DURING THE TERM OF THE SETTLEMENT.

When a gas sales contract expires during the term hereof, and the price being charged for gas sold under such contract is less than the ceiling price applicable to gas of the same contract vintage, the producer may, at that time, file for and collect a rate up to but not exceeding the then applicable ceiling price, including the application of Section 3.2, for gas of the same contract vintage as the original contract. Nothing contained above

shall prejudice any party with respect to whether the sale shall be continued.

This Section shall not be construed as preventing, upon fulfillment of the contract, the termination of a limited term contract, a contract to sell limited quantities of gas, or a warranty-type

contract, when those sales were expressly certificated by the Commission as such.

SECTION 7. REFUNDS AND DISPOSITION THEREOF.

7.1 Subject to Section 8 hereof, as to amounts collected by all producers under sales from the Southern Louisiana Area subject to refund under a Commission order in the proceedings in (1) Docket Nos. AR61-2, *et al.*; (2) Docket No. AR69-1; (3) *Union Texas Petroleum, et al.*, Docket Nos. G-13221, *et al.*, together with all dockets covered by Opinion No. 575; (4) any pending rate suspension dockets not consolidated in Docket Nos. AR61-2, *et al.*, except amounts based on differences in contract interpretation; (5) any proceeding involving an increase in rate filed on or after October 1, 1970, and (6) any other pending certificate docket covered hereby, refunds shall be calculated in the following manner:

(a) With respect to deliveries made prior to the Effective Date of this Settlement Proposal, the ceiling prices per Mcf set out below, as adjusted by the terms of Sections 2.3 and 3.4, shall apply to all producers. Revenues collected subject to refund in excess of the ceiling prices per Mcf set out below, together with applicable interest, shall be calculated by producers on a rate schedule by rate schedule basis in accordance with the percentages

set forth in *Jack W. Grigsby*, 32 F.P.C. 529 (1964), which provide for 100 percent cash refunds for the years 1963 and thereafter, 70 percent cash refunds for the years 1961 and 1962, and 25 percent cash refunds for 1960 and prior years:

	Prices for Refund Calculations		
	For Deliveries Under Contracts Dated Prior to January 1, 1965	For Deliveries Under Contracts Dated From January 1, 1965 to October 1, 1968	For Deliveries Under Contracts Dated on or After October 1, 1968
Onshore	20.625¢	21.25¢	22.25¢
Offshore	19.625¢	20.25¢	21.25¢

In applying the above price levels, it is understood that any amount collected by a producer, even though in excess of the above prices, shall not be subject to refund to the extent such collections were pursuant to a prior settlement agreement approved by the Commission, or collections were not in excess of the price set out in a permanent certificate issued by the Commission, or such collections were not in excess of the refund floor provided in a temporary authorization applicable thereto.

(b) With respect to collections for deliveries which are related to increases in rates filed on or after October 1, 1970, the increased amounts collected in excess of prices equal to the ceiling

[11,781]

prices set out in Section 3.1, as adjusted, shall be refunded in cash.

For purposes of calculating refunds under Subsections (a) and (b) above, the Onshore price will be applied to

Offshore gas delivered inland from the Chapman Line and to gas sold from the Disputed Zone.

7.2 Within ninety (90) days after the Effective Date, each producer shall file a refund report with the Commission setting out the amount of its refund obligation to each purchaser, calculated in accordance with the provisions hereof, including accrued interest computed to the Effective Date. Such refund reports shall be verified by the respective purchasers at the time of filing. The producer shall also within ninety (90) days from the Effective Date either (A) elect to pay its refund obligation to the appropriate purchaser together with interest thereon as heretofore prescribed by the Commission for each respective rate schedule; or (B) in the alternative, file a notice that such producer elects to discharge its refund obligations together with accrued interest thereon other than those contemplated by Sections 7.1(b) and 8.1 by authorizing and directing the purchaser to deduct three cents (3.0¢) per Mcf from current deliveries under contracts dated prior to October 1, 1970, in the Southern Louisiana Area, during a five (5)-year period following the Effective Date until

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the refund obligation, including interest, is discharged. The notice of election shall be filed with the Commission with a copy to the purchaser. If the producer fails to file such notice of election within ninety (90) days from the Effective Date, the producer shall be deemed to have elected alternative (A) above.

With respect to refund amounts reported as above and as to which producers elect alternative (A), further interest shall not accrue from the Effective Date to the date specified by the Commission for the payment in cash of such refunds; *provided, however,* after the date

specified by the Commission for such cash refunds simple interest at seven percent (7%) per annum shall accrue on such refund obligations until the first day of the month in which payment is made. With respect to reported refund obligations as to which a producer has elected alternative (B), further interest shall not accrue on such amount. Notwithstanding the filing by a producer of its notice under alternative (B), such producer shall have the right to pay at any time in full its remaining refund obligation to a particular purchaser.

7.2.1 Each producer who elects to follow alternative (B) shall establish and maintain accounts showing refund obligations by rate schedule and by purchaser. On or before March 15 of each

[11,783]

year following the year in which such producer elected to pursue alternative (B), it shall file a report with the Commission showing the current status of such accounts, and the credits against such accounts by deductions from deliveries during the preceding calendar year, or the full discharge of the obligation. The portion of the report applicable to each purchaser shall be furnished to such purchaser at the time of filing.

7.2.2 If during the five (5)-year period following the Effective Date deliveries to a purchaser or purchasers should cease before the refund obligation has been discharged under alternative (B), the producer shall within ninety (90) days refund such remaining amounts in cash to the purchaser or purchasers.

7.2.3 If at the expiration of the five (5) years following the Effective Date there remain in the accounts maintained by a producer pursuant to Section 7.2.1 any sums not discharged by the producer, the producer shall within

ninety (90) days refund such remaining amounts in cash to the purchaser or purchasers to whom the amounts were due.

SECTION 8. DELIVERIES FROM DISPUTED ZONE.

8.1 Gas sales from the Disputed Zone which were subject on October 1, 1970, (a) to escrow arrangements established

[11,784]

pursuant to Commission order; or (b) to specific agreements between the producer and purchaser providing for collection or retention of amounts pending the resolution of the boundary dispute; or (c) to Commission order establishing refund procedures for collections pending the resolution of the boundary dispute, shall be treated as follows: With respect to deliveries from and after the Effective Date if no change in rate is made or from and after the date that any change in rate made in accordance with Section 4 hereof becomes effective, the ceiling prices established by Section 3 for Onshore gas, as adjusted by the terms hereof, shall apply and the producer may collect, subject to refund, the difference, if any, between the Offshore and Onshore prices, as adjusted by the terms hereof, and the purchaser shall not be obligated to reimburse the producer for state taxes, except as provided in Section 3.3. Upon final resolution of the boundary dispute, the producer shall refund all of said amounts collected in excess of the applicable Offshore price, as adjusted by the terms hereof, together with simple interest at seven percent (7%) per annum, for those areas ultimately determined to be in the Federal Domain, and the provisions of Section 7.2 hereof are not applicable to such refunds. As to gas delivered inland from the Chapman Line by the producer, the provisions of Section 3.4 will apply.

[11,784-A]

8.2 Payments into escrow under existing escrow agreements or arrangements approved and/or ordered by the Commission on or before October 1, 1970, under which agreements or arrangements certain amounts attributable to purchases from the Disputed Zone are being escrowed pending final adjudication of the boundary dispute, shall be terminated sixty-five (65) days from the date of the Commissions order promulgating the terms hereof. Nothing herein shall prejudice the rights of any producer or purchaser to apply to the Commission for modification and/or termination of any escrow agreements or arrangements, or the disposition of any funds accumulated thereunder prior to the Effective Date, nor shall it prejudice the rights of any other party to oppose such application or claim such funds.

SECTION 9. TERM.

The provisions herein contained, except for Sections 7 and 8, shall be applicable to all jurisdictional sales in the Southern Louisiana Area during a term extending for three (3) years from the Effective Date of this Settlement Proposal.

APPENDIX B

EXCERPTS FROM STATEMENTS FILED IN DOCKET NO. R-389A

(1) *Major Producer Group.* A joint response was filed on behalf of major producers, including those supporting the UDC Settlement Proposal. Such joint comments showed the results of applying alternative rates of return to the 1968 costs, with the caveat that there were numerous shortcomings to the techniques used in Opinion No. 468. Two of these major shortcomings were illustrated: (1) the allocation of leasehold acquisition costs, with the impact of correction ranging from 2.13¢ per Mcf to 2.5¢ per Mcf; and (2) the disregard of the time value of money in the computation of the return on rate base. The impact on 1968 costs adjusted for both shortcomings was shown to be as follows:

Rate of Return	1968 Costs Adjusted for Lease Acquisition Allocation and Time Value of Money
12 percent	29.58¢
13 percent	31.15¢
16 percent	35.90¢

Subsequent joint reply comments filed by the Major Producer Group stated:

> "The newly available data show that all parties, including the producer group, had significantly underestimated the current cost of finding and producing non-associated gas."

After evaluation of such data, the preliminary FPC Staff composites of the responses to the AR69-1 questionnaire, and the drilling costs for 1969, the results showed "a

range of cost from 27.61¢ to 34.01¢ per Mcf." Such range was based upon Opinion Nos. 468 and 546 costing techniques, an illustrative 13 percent rate of return with only one year for time lag, and no adjustment for the understatement of return due to the disregard of the time value of money. At a 16 percent rate of return, the costs ranged from "30.48¢ to 37.86¢ per Mcf."

(2) *Texaco Inc.* Supplemental comments of Texaco Inc. recommended certificate ceiling levels for the Southern Louisiana Area of 29¢ to 31¢ per Mcf at 15.025 psia. Such ceilings were accompanied by the following caveat (Emphasis added):

> "The Commission is cautioned, however, that even at our recommended ceiling prices no guarantee can be given as to what amount of new gas reserves will be *explored for*, developed, produced *and then committed* to the interstate market."

(3) *Humble Oil and Refining Company.* The separate response of Humble Oil & Refining Company stated that:

[11,787]

> "For the dual purpose of inducing expanded gas exploratory programs in the major producing areas and to attract available gas supplies to the interstate market, Humble recommends that the Commission establish as interim ceilings in this proceeding prices within the range of 26-32¢ per Mcf, exclusive of any allowance for gathering."

Further, Humble stated that the cost methods adopted in Opinion Nos. 468 and 546 were biased toward lower level cost estimates and showed that there is not a single instance where the method or approach advocated by a producer-sponsored witness was endorsed. With respect to rate of return, Humble specifically adopted the evi-

dence presented in Docket No. AR69-1 by Dr. Ezra Solomon showing that the appropriate rate of return applicable to a new gas cost computation was in the range of 15.3-16.2 percent. Humble further observed that:

> "The establishment of lower prices for gas on the fortuitous ground of the date of contract has operated to deny contract expectations that led to past commitments of gas reserves to the interstate market."

Humble then warned:

> "In making these recommendations, we must candidly state that no quantifiable assurance can be given that such ceiling prices will bring forth sufficient new gas reserves to meet the requirements of all of the interstate pipelines.'

(4) *Phillips Petroleum Company.* In separate comments, Phillips Petroleum Company stated that ceiling prices prescribed in

[11,788]

Docket No. R-389A for new gas sales must be at least 10¢ per Mcf higher than previous guideline or inline prices, indicating that an increase of this magnitude is *the minimum necessary* to bring about substantially increased exploration for new gas supplies.

(5) *Tenneco Oil Company.* In supplemental comments, Tenneco Oil Company stated that:

> "Based on all evidence available it is felt that price levels of at least 30¢ per Mcf for all future sales for all areas of the nation will be necessary to give producers the incentive needed to overcome the present supply problem and meet the future needs of both the interstate and intrastate markets."

(6) *Gulf Oil Corporation, et al.* In supplemental comments, Gulf Oil Corporation and Warren Petroleum Cor-

poration recommended that the Commission give particular consideration to *recent changes in intrastate contract prices* and conditions of sale in the Permian Basin, Texas Gulf Coast and Southern Louisiana Areas.

(7) In the investigation of intrastate contract pricing provisions conducted by Commission Staff in connection with Docket No. R-389A, Staff found that contract prices for intrastate sales within the Southern Louisiana State taxing jurisdiction ranged up to 30¢ per Mcf. (Report of Investigating Officers, p. 11, Appendix B, September 9, 1970)

FPC SUSPENDED RATE INCREASES
PRODUCER COMPANY WIDE SETTLEMENTS

COMPANY	DATE OF ORDER	CASH REFUNDS	ANNUAL RATE REDUCTION
Amerada Petroleum Corporation	2-1-63	$ 884,000	$ 351,000
Atlantic Refining Company	10-8-64	4,766,000[1]	2,125,000
British-American Oil Producing Co.	12-28-66	625,000	260,000
Cities Service Company	12-26-62	2,361,000	698,000
Gulf Oil Corporation	4-25-63	3,745,000	2,378,000
Humble Oil & Refining Company	7-8-64	9,779,000	3,485,000
Mobil Oil Corporation	5-5-64	12,413,000	5,541,000
Monsanto Company	1-3-67	142,000	100,000
Mound Company	8-5-63	405,000	113,000
Pan American Petroleum Corporation	4-13-66	15,551,000	5,600,000
Shell Oil Company	8-1-62	8,657,000[1]	5,751,000
Sinclair Oil & Gas Company	7-1-63	1,157,000	670,000
Sohio Petroleum Company	12-30-63	1,901,000	853,000
Sun Oil Company	10-1-64	4,800,000[1]	1,400,000
Sunray DX Oil Company	1-29-65	2,129,000	1,400,000
Texaco Inc.	12-30-63	8,251,000	2,808,000
Texaco Gulf Producing Company	12-30-63	834,000	342,000
Tidewater Oil Company	6-15-62	4,347,000	1,280,000
Union Producing Company	12-23-64	3,400,000[1]	1,060,000

[1] Exclusive of Applicable Interest

APPENDIX D

Southern Louisiana Area Rate Proceedings
Producer Refund Obligations to Pipelines Through 1970 Under Opinion 546 Rates

(000's omitted)

Company	Total	Principal	Interest
Michigan-Wisconsin	$ 16,460	$ 14,797	$ 1,663
Consolidated Gas Supply	1,006	921	85
Southern Natural	47,928	36,751	11,177
Tennessee	116,618	93,167	23,451
Texas Gas	9,597	8,385	1,212
Trunkline	31,534	25,429	6,105
United Gas Pipe Line	71,866	60,723	11,143
Transco	29,326	25,081	4,245
Texas Eastern	4,144	3,761	383
United Fuel	34,214	29,230	4,984
Florida Gas	2,858	2,434	424
Natural Gas Pipe	9,513	8,450	1,063
Park Pipe Line	241	223	18
Gas Gathering Corp.	210	176	34
Jupiter	913	685	228
Total	$376,428	$310,213	$66,215

Southern Louisiana Area Rate Proceedings
Refund Obligations of Major Producers Through 1970 Under Opinion No. 546 Rates
(000's omitted)

Company	Total	Principal	Interest
Amerada	$ 944	$ 821	$ 123
Atlantic Richfield	8,540	7,730	810
California	42,280	31,787	10,493
Cities Service Cos.	3,352	3,010	342
Forest	4,899	3,520	1,379
General American	13,353	10,694	2,659
Getty	4,617	4,206	411
Gulf	7,501	6,868	633
Humble	24,455	22,589	1,866
Hunt Interests	7,342	6,110	1,232
Kerr-McGee	10,591	8,028	2,563
Marathon	2,025	1,767	258
Mobil	6,466	5,898	568
Pan American	8,483	7,421	1,062
Phillips	12,160	9,268	2,892
Placid	14,251	11,020	3,231
Shell	36,568	31,252	5,316
Sun & Sunray DX	7,405	6,845	560
Superior	59,602	46,906	12,696
Texaco	17,245	15,357	1,888
Union Oil of California	17,047	13,506	3,541
Union Producing	1,051	974	77
Union Texas	381	353	28

[11,792]

[Caption Omitted]

ANSWER OF E. COCKRELL, JR. TO MOTION FOR PROMULGATION OF SETTLEMENT PROPOSAL

Pursuant to Section 1.9 of the Rules of Practice and Procedure of the Federal Power Commission (Commission), E. Cockrell, Jr. (Cockrell) hereby answers the Motion of United Distribution Companies for Promulgation of Settlement Proposal (UDC Motion) filed with the Commission on November 6, 1970. For answer, Cockrell would show as follows:

I.

Cockrell generally supports the Settlement Proposal attached as Appendix A to the UDC Motion, and, subject to the position set forth below, urges the Commission to grant the UDC Motion and issue and order or orders in the applicable proceedings promulgating the substantive terms and provisions set forth in the Settlement Proposal.

[11,793]

II.

Cockrell would show that the ceiling prices and other provisions of the Settlement Proposal, if promulgated by the Commission, will provide *some* incentive to increase the exploration for and development of gas reserves in the Southern Louisiana Area; however, in his opinion, they are insufficient to increase exploration and development activities to the extent necessary to do anything other than to temporarily (or partially) relieve the natural gas supply shortage in the Southern Louisiana Area.

WHEREFORE, as above stated, Cockrell supports the Settlement Proposal attached as Appendix A to the UDC Motion, and prays that the Commission enter an order or orders promulgating the prices, terms and conditions therein set forth.

Respectfully submitted,

/s/ E. Cockrell, Jr.
E. COCKRELL, JR.

December 8th, 1970

[11,800]

[Caption Omitted]

ANSWER BY GENERAL AMERICAN OIL COMPANY OF TEXAS IN SUPPORT OF MOTION FOR PROMULGATION OF SETTLEMENT PROPOSAL

General American Oil Company of Texas (General American)—a significant independent producer but not one of the major companies—supports the Settlement Proposal for the Southern Louisiana Area. Incident to that support and in response to the Commission's Notice of Motion for Promulgation of Settlement Proposal, we submit the following comments.

I

The Problem of Unsuccessful Exploration

Under the terms of the Settlement Proposal a substantial refund exposure will be imposed upon General Ameri-

[11,801]

can. We estimate it to be in the neighborhood of Five Million Dollars ($5,000,000.00). The precise amount could be calculated and refunded in cash. That would be the more cautious procedure.

But if the primary concern of the Commission is an adequate supply of gas for the consuming public—as surely it must be—then it is far preferable for those funds to be directed into the search for gas. Only by increased exploration can the supply of gas be augmented. Section 8.2 of the Settlement Proposal establishes a procedure designed to accomplish that purpose. As written,

however, the procedure tends to make each cooperating producer an insuror of the success of its exploratory activities. This unrealistic and potentially punitive burden is a weakness in the proposal. The smaller the producer, the more punitive the procedure may become. Notwithstanding this possibility, General American supports the Settlement Proposal—but with substantial reliance upon the extension of fair treatment by the Commission in response to any petition for special relief that may be filed under Section 8.2.6 of the Settlement Proposal if the hunt should prove disappointing.

[11,802]

General American presently intends to undertake, by sincere and diligent efforts, to find gas in South Louisiana and to commit to that exploratory effort the total sums that would otherwise be refunded. But if or to the extent that such exploration is unsuccessful, then the funds will have been spent and will no longer be available for refunding. Our relief from double exposure in those circumstances would be a petition to the Commission under Section 8.2.6. And in the spirit of regulatory fairness we would expect a receptive consideration of such a petition. More specifically—if we are then able to demonstrate that the refund amounts were in fact spent in good faith in the effort to find gas and further, as a result of conditions beyond our control that gas was not found in sufficient amounts to satisfy the refund exposure, then we would expect the Commission to accept such proof in lieu of any further refunds and in full satisfaction of our responsibilities under the Settlement Proposal.

Naturally we hope that the use of such funds in the search for gas will result in the discovery of significant new supplies. But the nature of exploration precludes

any guarantee of results. The Commission has repeatedly recognized the error of attempting to judge exploratory success on an individual company, or even an individual area, basis. The lack of a predictable relationship between a single company's expenditures and reserves discovered as a result of those expenditures is an important part of the very rationale for area rate proceedings. In the Southern Louisiana Opinion 546, 40 FPC 530, 560 (1968), the Commission correctly determined from the evidence before it:

> "Exploration is an industrywide effort directed toward meeting the needs of a national market."

Further in that same opinion, at page 579, the Commission wrote:

> "We think the price should be and indeed must be sufficient to induce *the industry* to carry on the search for new reserves, because it is only through a continuing program of exploration that the increasing demand for natural gas can be satisfied. The encouragement of *industry* exploratory activity is a valid objective of regulation, . . ."

Even the Settlement Proposal itself takes into account the industry nature of the exploratory effort. Future escalations of ceiling prices contingent upon New Gas Reserves (§ 3.3.2) are geared to the industry's discoveries

rather than to the discoveries of an individual company. This is as it should be.[1] And it is conceptually inconsistent with the effort to measure the productivity of refund sums channeled into further exploration by an individual company's success. As a practical matter the inconsistency is understandable. It results from the inability of the negotiating parties to agree in advance on a formula for determining when the funds have in fact been spent on exploration for natural gas. But we believe it will be possible, after the fact, to make that determiantion under Section 8.2.6.

II

The Adequacy of the Ceiling Prices

General American, as a proponent of the Settlement Proposal, willingly endorses the following representation

set forth as Section 11 of that proposal:

> "Each producer individually represents to the Commission that the ceiling prices and other provisions contained herein provide incentive for the exploration for and development of gas reserves in the Southern Louisiana Area. In view of the nature of producing and finding hydrocarbons, it is unrealistic to expect producing companies to guarantee that the ceiling prices and other provisions contained herein

[1] General American obviously opposes the suggestion of Texaco Inc. that the entitlement to such increases be measured by the exploratory successes of each individual producer. That position is unsound even for a company as large as Texaco. It is increasingly unsound as the size of the producers affected becomes smaller.

> will elicit a specific supply of gas; however, it is believed that the ceiling prices and other provisions contained herein will make funds available to the producing industry and create a regulatory atmosphere which should provide an incentive for a substantial increase in exploratory and developmental activities and make a major contribution to bringing forth additional supplies of gas from the Southern Louisiana Area to meet the demands of all consumers supplied by this area."

Here again however candor requires the observation that we are dealing with unknows and unknowables. Certainly past prices have proved inadequate for discoveries commensurate with the demonstrated demand for gas. The Settlement Proposal prices provide additional incentive which will generate substantial increases in exploratory and development activities. All parties concerned hope that the ultimate result of that incentive will be discoveries of gas in quantities sufficient to meet the burgeoning demand. Whether that will prove to be the case however cannot be known with

any precision in advance. What we do know for sure is that the prices contained in the Settlement Proposal provide an incentive which is a step in the right direction and which may prove to be a big enough step.

It is also appropriate to observe in this connection that unfavorable trends in other areas beyond the control of the parties to this proceeding or of the Commission could negate in whole or in part the incentive provided by the terms of the Settlement Proposal. To illustrate—changes in the tax laws which would have the effect of depriving the producers' exploratory budget of funds made avail-

able by sales of gas under the Settlement Proposal prices would tend to offset the incentive which the Settlement Proposal endeavors to provide. Or inflationary pressures and other unfavorable developments within the general economy would necessarily have their impact on the adequacy of the Settlement Proposal incentives.

But these are matters which, while they influence the effectiveness of the actions of the parties to these proceedings and of the Commission, are beyond immediate control. They do not therefore detract from the sincerity or

optimism expressed in Section 11 of the Settlement Proposal as above quoted.

III

Deliveries From Disputed Zones— A Point of Minor Clarification

General American's support of the Settlement Proposal is partially predicated upon its understanding that a producer will be entitled to collect all amounts provided for in contracts covering gas produced in the disputed zones so long as the total ceiling prices established by Section 3 for onshore gas as adjusted by the terms of the Settlement Proposal are not exceeded. Turning to Section 3 it is apparent that the ceiling prices provided for therein are total prices inclusive of tax reimbursements up to October 1, 1970, whereas if taxes are increased subsequent to that date such ceiling prices are increased under Section 3.4. As we understand the proposal this lump sum ceiling rate is the reason for the cause in Section 9.1 which reads ". . . and the purchaser shall not be obligated to reimburse the producer for state taxes, . . .", i.e., for

state taxes above the ceiling rate except for tax changes after October 1,

[11,808]

1970.

As an example where a producer's contract rate under a contract dated prior to October 1, 1968, including adjustments but prior to tax reimbursements equals 22.375¢ such producer would not be entitled to reimbursement for state taxes. However where a producer has a base contract rate of 19¢ per MCF and is entitled by contract to 1.5¢ per MCF tax reimbursement it is our understanding that such producer would collect a total rate of 20.5¢ per MCF because such total rate would not exceed the ceiling rate provided for in Section 3. This result would appear necessary in connection with the distinction between onshore and offshore gas in Sections 3.1 and 3.5. To the extent, if any, that this understanding may not be clearly stated in Section 9.1 the Commission should clarify this point in its order approving the Settlement Proposal. Any contrary interpretation would expose producers to an unintended penalty by depriving him of the tax reimbursement to which they are contractually entitled with respect to taxes they will have to pay in the event the State of Louisiana prevails in its assertion of jurisdiction over the disputed zone.

Respectfully submitted,

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[11,812]

[Caption Omitted]

ANSWER OF EXCHANGE OIL & GAS CORPORATION IN SUPPORT OF MOTION FOR PROMULGATION OF SETTLEMENT PROPOSAL

Pursuant to Section 1.9 of the Commission's Rules of Practice and Procedure and the Secretary's Notice of November 9, 1970, Exchange Oil & Gas Corporation (Exchange) hereby answers and supports the Motion for Promulgation of Settlement Proposal filed by the United Distribution Companies (UDC) in the above-captioned proceedings on November 6, 1970.

Exchange also individually represents to the Commission that the ceiling prices and other provisions contained in the Settlement Proposal provide incentive for the exploration for and development of gas reserves in the Southern Louisiana Area. In view of the nature of producing and finding hydrocarbons, it is unrealistic to expect producing companies to guarantee that this proposal will elicit a specific supply of gas; however, it is believed that this proposal will make funds available to the producing industry and create a regulatory atmosphere which should provide an incentive for a substantial increase in exploratory and developmental activities and make a major contribution to bringing forth additional

[11,813]

supplies of gas from the Southern Louisiana Area to meet the demands of all consumers supplied by this area.

Answer of Exchange Oil & Gas Corp. Supporting Motion

WHEREFORE, Exchange Oil & Gas Corporation submits that the Motion of United Distribution Companies should be granted and the Settlement Proposal contained therein should be adopted by the Commission.

Respectfully submitted,

EXCHANGE OIL & GAS CORPORATION

By /s/ Louis Flax
LOUIS FLAX
Its Attorney

Shannon and Morley
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Washington, D. C. 20006

December 9, 1970

[11,816]

[Caption Omitted]

ANSWER OF SKELLY OIL COMPANY TO MOTION FOR PROMULGATION OF SETTLEMENT PROPOSAL

Pursuant to the Federal Power Commission ("Commission") Notice of Motion for Promulgation of Settlement Proposal issued November 9, 1970 and pursuant to the Commission's Rules of Practice and Procedure, Skelly Oil Company ("Skelly") hereby answers the Motion for Promulgation of Settlement Proposal filed by the United Distribution Companies ("UDC"). Skelly urges the Commission to grant said Motion and issue an order in the subject proceedings promulgating the terms and conditions set forth in the settlement proposal attached to the UDC Motion as Appendix A in all aspects, except with regard to the manner of computing refunds for deliveries made during the period October 1, 1968 to January 1, 1971 under contracts dated after October 1, 1968 as set forth in Section 8.1(b).

Producers making deliveries under these post 10/1/68 contracts during the period October 1, 1968 to January 1, 1971, will be obligated under the provisions of Section 8.1(b) to

[11,817]

calculate refunds by applying from 30.5% to 33.0% of the difference between revenues for this period based on rates prior to October 1, 1970 and the revenue which would have resulted for this period through the application of rates established by Opinion Nos. 546 and 546-A. During this period, the maximum price that Skelly and all producers similarly situated have been

permitted to collect is 20.0¢ per Mcf. On this basis the refund level for deliveries after October 1, 1968 will be below the refund levels established by the settlement proposal not only for deliveries from January 1, 1965 to October 1, 1968 but also for the period prior to January 1, 1965. Additionally, those producers who have had the good fortune of being permitted to collect a substantially higher price than 20.0¢ per Mcf for deliveries subsequent to October 1, 1968 pursuant to the Stay of Commission Opinion 546 will be collecting substantially more during this same period, even though their gas is of earlier vintage.

These anomalous results flow from an effort to establish a total refund obligation arbitrarily at $150,000,000, regardless of the inequities which may ultimately result. Skelly respectfully suggests that the Commission, in promulgating this settlement proposal, should weigh carefully the questionable advantages derived from the establishment of an arbitrary total refund obligation against the consequences which may result from an appeal by a dissenting producer or

other party challenging the discriminatory and preferential result. In Skelly's opinion, no greater damage could be done than to have the Commission's order promulgating the settlement proposal set aside after extensive lapse of additional valuable time.

Skelly respectfully suggests that the settlement proposal be modified to provide that no refunds will be required for deliveries after October 1, 1968 under contracts dated after October 1, 1968 below the refund level established for deliveries from January 1, 1965 to October 1, 1968. No prior action of the Commission is consistent

with the proposition inherent in the settlement proposal that gas sold under contracts dated on and after October 1, 1968 should, during any period of time, be treated less favorably than gas of earlier vintage.

In the event that said settlement proposal is modified as herein suggested, Skelly individually represents to the Commission that the ceiling prices and other provisions contained in the settlement proposal provide incentive for the exploration and development of gas reserves in the Southern Louisiana Area. In view of the nature of producing and finding hydrocarbons, it is unrealistic to expect producing companies to guarantee that this proposal will illicit a specific supply of gas; however, it is believed that this proposal will make funds

[11,819]

available to

Save Room for About 10 Lines of Illegible Copy— ....

Dated this 8th day of December, 1970.

Respectfully submitted,

SKELLY OIL COMPANY

By /s/ David E. Byers
DAVID E. BYERS, Attorney
P. O. Box 1650
Tulsa, Oklahoma 74102

[11,827]

[Caption Omitted]

ANSWER OF SOHIO PETROLEUM COMPANY TO MOTION FOR PROMULGATION OF SETTLEMENT PROPOSAL

Pursuant to Section 1.9 of the Rules of Practice and Procedure of this Commission and its Secretary's Notice herein dated November 9, 1970, Sohio Petroleum Company (Sohio) hereby answers the Motion for Promulgation of Settlement Proposal filed by the United Distribution Companies (UDC) on November 6, 1970.

I

Sohio hereby adopts the ANSWER BY INDICATED PRODUCERS TO MOTION FOR PROMULGATION OF SETTLEMENT PROPOSAL dated November 6, 1970, and filed by Shell Oil Company, et al.

II

In accordance with Section 1.18 of the Commission's Rules of Practice and Procedure, Sohio's response herein shall be privileged in all respects.

WHEREFORE, Sohio Petroleum Company prays that the Commission enter an order promulgating the rates,

terms and conditions of the Settlement Proposal filed in the subject proceedings.

Dated this 8th day of December, 1970.

Respectfully submitted,

SOHIO PETROLEUM COMPANY

By /s/ Richard F. Remmers
RICHARD F. REMMERS
Its Attorney

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[Caption Omitted]

RESPONSE OF MEMPHIS LIGHT, GAS AND WATER DIVISION TO OFFER OF SETTLEMENT

The Memphis Light, Gas and Water Division (Memphis), an intervenor in these proceedings, in response to the Settlement Proposal herein made by the United Distribution Companies group, states:

Memphis rejects the settlement offer and requests that the Commission disapprove same and decide this case on its merits on the record. In a decision on the record, the Commission could not find that a forgiveness of the past rates established in Opinion 546 was justified, and therefore could not waive refunds of more than $376,000,000, as contemplated in the proposed settlement. In a decision on the record the Commission could not find that "new" gas, priced primarily on an incentive basis, included all gas heretofore committed to interstate contracts since October 1, 1968. Therefore, the proposed settlement is in no way supported by the

record, nor by any conceivable record which might be made in this case.

In addition, any order of this Commission retroactively changing the rates established in Opinion 546 would be unlawful and in violation of the Natural Gas Act, for all of the reasons set forth in the petition of the Municipal Distributors Group to the United States Supreme Court for certiorari to the Fifth Circuit Court of Appeals in the case of *Municipal Distributors Group* vs. *Federal Power Commission*, (Oct. 1970 Term, No. 669) and for

the reasons set forth in the Brief of the Commission Staff on that issue in the Fifth Circuit. The denial of certiorari by the United States Supreme Court on December 7, 1970 of course does not resolve that issue.

However, Memphis feels that an early termination of the litigation in this docket would be very much in the public interest. Accordingly, as a compromise settlement of a disputed issue, Memphis would at this time accept without appeal an order in this cause setting the rates for "new" gas (defined as gas committed subsequent to October 1, 1970) at the rate of 26 cents and setting rates for "old" gas at the Settlement Proposal level of 21.375 cents for off-shore gas and 22.375 cents for on-shore gas, and would accept the provision for escalation of ceiling prices in Section 3 of said Settlement Proposal, provided that the contingent escalation therein provided for would not become effective until after a total of

[11,831]

15 trillion cubic feet of New Gas Reserves from South Louisiana shall have been committed to the jurisdictional market; that is to say, the computation of the first seven and one-half (7.5) trillion cubic feet of New Gas Reserves to be committed to jurisdictional sales shall begin to be computed after the initial 15 trillion cubic feet of New Gas Reserves shall have been fully committed. Such acceptance is conditioned upon the agreement by the producers to pay all refunds required by Opinion 546, and to fix the date of division for new gas contracts at October 1, 1970, and is further conditioned upon prompt termination of these proceedings.

This is in the nature of a counterproposal, and it does not constitute an admission that such rate provisions are

lawful under the Natural Gas Act or would result in just and reasonable rates, and if this counterproposal is not accepted, Memphis reserves the right to contest said contemplated escalation provision, as well as all other provisions, of said Settlement Proposal.

In its consideration of the Settlement Proposal, the Commission should take account of the following propositions:

1. There is no valid reason to conclude that the current shortage of gas available for the jurisdictional market in South Louisiana has been caused by any inadequacies in past price for gas.

[11,832]

2. There is no reason to conclude that exorbitant concessions need be made to the producing industry in South Loiusiana in order to make available to the jurisdictional market substantially increased quantities of gas reserves.

3. There is no guarantee by the producing industry that even the exorbitant concession of the Settlement Proposal will make available sufficient quantities of gas to solve the current problems facing the industry.

4. Regardless of the outcome of the present litigation, there will be a substantial shortage of available natural gas supply for the foreseeable future. The only issue here is one of degree.

5. No possible incentive for future exploration and development could result from either a waiver of refund of past overcharges or an arbitrarily retroactive date for defining "new" gas to receive a 26 cent price.

The above propositions are based upon the following facts, most of which are of record in this cause:

[11,832]

Response of Memphis Light to Offer of Settlement

1. *Regulated prices have not caused the current shortage.*

The contention by the producers that the present supply problems in the industry are solely or primarily the result of inadequate prices in the past has been repeated so often that it has gained credibility among

[11,833]

the distribution industry, and apparently at the Commission, simply by dint of repetition. A careful examination of the facts fails to bear out this contention.

One clear and cogent reason for the present shortage is the failure of all segments of the gas industry to anticipate in advance the enormous surge of demand for gas in the decade of the 1960's. It is well known that in the early 1960's there was a condition of substantial oversupply, and most interstate pipelines were struggling with commitments to take or pay for gas which they were having difficulty selling in the quantities for which they had contracted with the producing industry. Thereafter, the increase in demand was unprecedented and unexpected. The Commission itself has taken note of this circumstance in its Opinion 586 in the Hugoton-Anadarko Area Rate Proceeding. There the Commission said:

> "Virtually all predictions as to energy consumption in the past few years have proven swiftly to be gross under-estimates." p. 20
>
> "The predictions of local distributors as to expected demands on them have proven in recent years not only too low, but very much too low. Independent and industry surveys, and the witnesses who have testified in area rate cases as to the probable demand for gas have unanimously underestimated the growth

in demand, some by 200 per cent. The predictions for coal and oil have also been proven to be far short of the reality." Fn. 14 p. 20.

[11,834]

The Commission's reference to coal and oil predictions is further enlightening. The severity of the present shortage of coal and oil is, as the Commission well knows, of crisis proportions. It is unconvincing and unreasonable to argue that price regulation has caused the gas shortage, when the supply of the other two principal energy fuels is in precisely the same condition, without those fuels ever hav ing been under price regulation. Common sense strongly indicates that the same basic circumstances have caused the same type of shortage throughout the energy-producing industries.

Even if the prices for gas in other areas bore a causal relation to the shortage there, there is no indication upon the record of this case that the South Louisiana shortage is price-induced. The fact is that the enormous increase in national demand for production since 1964 has fallen principally upon South Louisiana. A comparison in the production of the years 1964 and 1969 shows that South Louisiana increased almost twice as much as the combined total of Texas Gulf Coast Area, the Hugoton-Anadarko Area, the Permian Basin Area and other Southwest Area (Ex. 21, Sch. 34-38). Percentage-wise, the comparison between the two years is equally impressive. The South Louisiana production increase is from 3513 bcf to 6789 bcf, or 93%; the Texas Gulf Coast increased from 3289 bcf to 3827 bcf, or 16%; Hugoton-Anadarko Area increased from 2582 bcf to 3119 bcf, or 21%; the Permian Basin

Area increase from 1541 to 2277, or 48%; and Other Southwest Area production decreased from 2424 to 2359 (Ex. 24, Sch. 34-38).

Obviously, if there had been an uniform increase in production among the various areas, there would be no supply problem in South Louisiana at this time. Not only has this area felt the effects of the ultraconservative growth estimates, but it has largely made up for the production deficiencies in the other areas. If price is in fact a factor, then the increases should be applied to the areas where they are needed because of failure of production to keep pace with growing demands.

The main thrust of the producers' contentions is that higher prices are required to provide incentive for exploratory drilling. If this is the criterion, then the experience in South Louisiana during the 1960's shows no inadequacy of price. A comparison of the years 1963, -64 and -65 with the years 1966, -67 and -68 is revealing: During the earlier period the drilling footage for gas and gas condensate wells drilled in South Louisiana was 2,794,000 feet. In the later period the footage was 3,711,000, an increase of 34% (Ex. 11, Sch. 7). However, for developmental gas and gas condensate wells there was a *decrease* of 17% as between the two periods (Id.). Because the developmental footage was two to three times as great as the exploratory footage, there was an

overall slight decrease in drilling for the later period. However, this would imply that the industry was building up its inventory of "probable reserves" in South Louisiana, at the expense of its inventory of "proven reserves".

On the national level, the same trends—an increase in exploration and a decrease in development—are to be found from a comparison of the same time periods (Ex. 11, Sch. 2, 3).

The third circumstance which provides a reasonable explanation for the decline in the R/P ratio during the 1960's is the excessiveness of the R/P ratio in the earlier years. It is obviously unnecessary and uneconomic to maintain R/P ratios of 20 to 30 years, as was the case during the period from 1947 through 1960 (Ex. 21, Sch. 5). The high R/P ratio of the early 1960's no doubt contributed to the decline in initial contract prices from 22.7 cents in 1960 to 18.8 in 1964 (Ex. 6, Sch. 1). The large oil producers, who had watched the bottom drop out of their oil prices in the 1940's because of oversupply, would have every incentive to avoid a repetition of that experience on the gas side.

A national reserve-to-production ratio only of 12 to 1 has been assumed by Producer Witness Schantz for the purpose of his "Positive Program for Balancing Supplies of Natural Gas with Consumer Demands in the Continental United States to 1980." (Ex. 21, Sch. 26) In the Staff's report on National Gas Supply and Demand (Ex. 9, Page 15) the critical

R/P ratio is defined as "the ratio at which increasing production can no longer be sustained at historical levels" and the critical R/P ratio for the South Louisiana is said to be only 8 to 1. The actual R/P ratio at the end of 1969 for South Louisiana was 11.9 (Ex. 21, Sch. 34). Until 1968, the R/P ratio for South Louisiana had remained above 15 to 1, a higher level than any witness testified to be essential to a condition of ade-

quate supply. At the end of 1968 the national R/P ratio was 14.8 (Ex. 11, Sch. 22). *There is no reason to believe that the producing industry would have desired to preserve higher R/P ratios than these, regardless of the price levels in South Louisiana and elsewhere.* It was not until 1969 that the R/P ratio dipped below what the producers apparently considered to be a comfortable level, and it was not until 1970 that distributors generally ran into trouble obtaining additional supplies. While national reserves additions fell off in 1968, the most dramatic decrease was for the year 1969, when the level fell from the 18-to-21 trillion cubic feet range down to 8.338 trillion. (Ex. 21, Sch. 5). The record provides no explanation for the drop, but it was not because of a decline in effort. The total number of gas wells and the total productive gas drilling footage remained at about the same levels as in previous years (Ex. 21, Sch. 8, p. 1, 2). For the Seven Southwest States, exploratory footage for gas in 1969 was higher than any year since 1960,

while, consistently with the pattern above mentioned, development footage was the smallest of any year in the decade. Since most gas is brought into the proven category through development drilling, the decline in the R/P ratio could logically be traced to the above-mentioned trend of increasing exploration while decreasing development, and thus building up probable reserves at the expense of proven reserves.

In considering the relatively poor showing in the "reserves-added" category during the last couple of years, it would be unrealistic to ignore the fact that both the performance and the figures reflecting that performance are totally in the hands of the producers, and most of the

figures related thereto are hidden from view under the blanket of confidentiality—and that the producers have obviously pinned all of their hopes for escaping from cost-based regulation on their contention that the nation is running out of gas and that the only solution for it is to set rates at the levels to which they would rise in a free market. No finder of facts can ignore the plain and evident self-interest which the producers have in presenting a frightening picture of inadequacy of suply. This does not imply that the producers are mendacious, only that they can be expected to act in their own interests and to put the most favorable possible light on all the facts and figures which they use to support their contentions.

In the light of the record evidence above discussed, there is every reason to believe that the current shortage of available gas supply is the

[11,839]

result of any one or all of a number of conditions and circumstances *other than* the well-head price which has been allowed for gas during the 1960's.

2. *The early availability of gas supply is not dependent upon total surrender to the producers.*

The most cursory review of the Settlement Proposal submitted to this Commission reveals that it constitutes, not a compromise settlement in the ordinary sense of the term, but rather conditions of surrender. It is difficult to conceive how the producers could have obtained a more favorable document. The most pressing issue which it raises for the Commission to decide is whether such a surrender is necessary in order to bring to market quan-

tities of gas sufficient to alleviate the present availability shortage. The answer, from the face of the record heretofore made, is clearly in the negative.

All parties freely agree that there is no shortage of ultimate supplies of gas to take care of the needs of the next several years—the shortage involves only the marketable inventory of proven reserves. The national proven reserves at the end of 1969 were 270 trillion cubic feet (Ex. 21, Sch. 5) and for South Louisiana were 80.769 trillion (Ex. 21, Sch. 29). However, "probable" reserves were almost as much again—260 trillion for the United States (R. 1567) and 76 trillion for South Louisiana (R. 1605).

[11,840]

These "probable" reserves provide the key to the present gas supply problem. They are easily, quickly and inexpensively available, and no additional price incentive is necessary to make it worth the producers' effort to bring them to market.

These "probable reserves" are defined by the Potential Gas Committee of the American Gas Association as follows:

> "Probable . . . The most assured of new supplies results from the growth of existing fields. As an example, a producing field of 40,000 acres may have an additional 20,000 acres which is highly prospective. The 20,000 acres of unproved supply would be categorized as probable." (R. 1567).

The producers' economic witness Schantz testified that these "probable" reserves are primarily already under lease and are found primarily as a result of developmental drilling. (R. 3543)

Since the "probable" reserves are already under lease, a substantial part of the investment necessary to bring them to market has already been made: the lease acquisition cost has been paid and a large part of the geological and geophysical work has been done. These represent investments already made which can only be recovered by production, and, because of the time value of money, the more quickly they are produced the more profitable they become. The Staff has given a comparison of expenditures for exploration and developmental wells,

[11,841]

and, because of the above considerations, it is not surprising to find that development costs ran one-tenth to one-fifteenth of the costs of exploratory wells (Ex. 11, Sch. 28). Furthermore, the success ratio for South Louisiana developmental wells (oil and gas) is about three out of four (Ex. 8, Sch. 3, p. 19) while that for exploratory wells is only about one out of five. (Id. p. 17).

The self-interest of the producers would be subserved by a program of increasing "probable" reserves while squeezing down on marketable reserves, thus creating a supply shortage pending the conclusion of the area rate case which will set rates for the future. Once the rates are set at substantially increased levels, the large inventory of "probable" reserves can be quickly brought to market at greatly enhanced prices and greatly enlarged profits. It is not unreasonable to expect the producers to act in their own self-interest.

However, in the light of the above analysis, it is evident that the producers would have a strong self-interest in bringing the "probable" reserves to market as quickly as possible after conclusion of this proceeding, almost re-

gardless of the price established herein. This is why Memphis is willing to accept what it considers to be extremely high rates in order to settle this case quickly. It is the consummation of the case, and not the level of rates, which will release the supply to solve the current shortage.

[11,842]

Still another reason for concluding that the producers can be motivated to produce by something short of total surrender is the general level of rates which they have chosen for themselves over the recent past, where they were untrammeled by rate regulation. The Staff, in its report to the Commission in Docket No. R-389A, revealed that, on the intra-state unregulated market in South Louisiana the weighted average current prices in contracts dated 1966 through 1969 range from 19.57 cents to 20.38 cents, and had risen to about 23 cents by mid-1970, due principally to one large sale at 30 cents. These were the highest intra-state rates of any area, as shown by the staff report. The weighted average initial contract prices in South Louisiana have never exceeded 22.8 cents and have been at the 20 to 21 cent level for the last five years. These are not the rates set by regulation, but by the producers themselves, in a seller's market. They presumably cover the producers' costs for exploration as well as the developmental wells and provide a profit which the producers, on the average, are satisfied with. These unregulated, producer-dictated prices lend force to the argument that "probable" reserves can be brought on to the market to solve the present shortage without making an unreasonable concession to the producers' need for incentive.

[11,843]

3. *The Settlement Proposal guarantees nothing to anybody.*

Section 11 of the Settlement Proposal is a tribute to the finesse of legal experts who desire to avoid any possible commitments whatsoever on the part of their clients. Properly analyzed, it expressly negates any commitment to "elicit a specific supply of gas" and expresses nothing more than a "belief" that this settlement will "provide an incentive" and "make a major contribution" toward bringing forth additional supplies.

The producers have consistently maintained that, if they can find any other investment anywhere on the face of the earth which is preferable to them, then their capital expenditures will go to that investment, and not to the exploration and development of gas reserves in South Louisiana for the jurisdictional market. This attitude on the part of the producers casts a grave shadow over the principal argument in support of the settlement agreement. It is no secret that some distributors, desperate for gas and in a position to pass along rate increases to their customers, contend that the prices here proposed for new gas are too low to provide sufficient incentive. We know that the producers have always spent the bulk of their exploration and development funds in the search for oil rather than gas (Ex. 11, Sch. 29). Only a small portion of the South Louisiana gas is associated with oil (Ex. 8, Sch. 1, Sheet 3, 4). If

[11,844]

there occurs a substantial increase in the market price of oil, then the producers, according to their stated formula, must invest in the search for oil a large part of

the additional hundreds of millions of dollars which the gas consumers will be paying under this settlement.

There are, of course, an indefinite number of other alternative investments, both in the world-wide search for hydrocarbons and even in other fields altogether. In the nature of the case we can never have any reliable assurance that increased revenues from gas will be spent by the producers to supply the needs of the customers who depend upon them.

4. *The Settlement Proposal is not a cure-all for supply problems.*

While the termination of these proceedings can be expected to loosen the presently tight supply situation, the record makes it plain that, regardless of price, the pressure of demand will exceed the supply potentiality of the producing industry for the foreseeable future.

The Staff Report on National Gas Supply and Demand stated in September, 1969:

> Even a substantial improvement in reserve additions during the 1969-1973 period above that experienced during the past five years will not prevent the R/P ratio from dropping to about 11 in 1973. Under no foreseeable circumstances will it be possible to hold the R/P ratio at its present level. Even under a greatly accelerated exploration program there is no single producing area, such as South Louisiana for example, which has sufficient potential for the development of new reserves

> at the timing and magnitude required to halt the decline in the national R/P ratio. (Ex. 9, p. 4)

Response of Memphis Light to Offer of Settlement

Producer Witness Schantz's "positive program" for South Louisiana, which assumes adequate producer incentives, prognosticates a further decline in R/P ratio to less than 11, and points out that it will take "extraordinary levels" of reserve additions to maintain even that ratio. (Ex. 21, Sch. 42; R. 1604-5)

Therefore, we can confidently anticipate a chronic supply problem in South Louisiana and throughout the nation for a long time to come, and the proposed settlement will not avoid it.

This, too, is a consideration to be taken into account in determining the amount of concessions made to producers in this settlement.

5. *Waiver of refunds and back-dating of "new" gas provide an unnecessary windfall for the producers, and only a squall for consumers.*

Increases in rates for gas already sold and delivered can have no substantial effect upon the future incentive to drill for gas. The Commission has consistently held that the incentive for future drilling is to be found in rates for gas discovered in the future. This was the only justification expressed by the Commission in Opinion 546 for a multi-price system in South Louisiana. 40 FPC at 551. It was likewise the justification for the two-price system promulgated in the Permian

Basin in Opinion 468, where the Commission stated the obvious and uncontrivertible proposition that:

> "The producers' inducement to engage in further exploration and development directed toward gas

> comes from the knowledge that future gas supplies will receive a price which provides adequate compensation." 34 FPC at 187.

The Supreme Court was convinced of the logic of this self-evident proposition. *Permian Basin Area Rate Cases* 390 US 747, 798.

The waiver of refunds ordered two years ago by this Commission, if treated as an incentive for future exploration, runs exactly contrary to the logic of all previous Commission and judicial thinking on this point. And yet, if this donation to the producers is not justified as an incentive to explore, it is not justified at all. Nowhere in this proceeding has there been—nor can there later be—any evidence whatsoever to support such a radical change in the judicially-approved findings as to just and reasonable rates in another docket. There is no evidence to support a finding that the Commission and Courts have been wrong in their consistent reasoning that past rates for gas already committed, sold, and in large part delivered, do not substantially affect the incentive for future exploration and development.

The justification relied on by those who would settle the new gas rates at 26 cents is that such rate is necessary and adequate to induce a sufficient level of exploration. That very justification negates any

necessity for the forgiveness of past obligations as an additional incentive to more intensive future exploration.

The argument of the producers that refunds will deplete their capital available for exploration and development was never very convincing. While the amount is

large, it represents only about one month's exploration and development expenditures of the entire industry. (Ex. 11, Sch. 27). Furthermore, it is not essential that the whole amount be repaid in one lump sum. The Commission could specify installments, with interest running on the unpaid balance.

The capital depletion argument has been further weakened by the Commission's action in terminating the moratorium in Docket No. AR61-2, which action opens the gates to enormous increases in current revenues to producers.

The format of the refund provision, which in effect credits producers one cent per Mcf of new gas committed to jurisdictional contracts, guarantees them a windfall of about $25,000,000, represented by 2.5 trillion feet of gas already found and available for sale, but not yet committed to contract. (Ex. 27-A). Even this figure is deceptively small. The $150,000,000 of refund, which is to be "paid off" at the rate of one cent per Mcf, is an arbitrary reduction of a fund now considerably in excess of $376,000,000. The effective credit is more than

2.5 cents per Mcf.

The gimmick of making "new" gas retroactive to October 1, 1968 for ceiling price purposes guarantees the producing industry the most enormous unearned windfall of all. The "new" gas ceiling, which is 3.625 cents higher than "old" on-shore gas, and 4.625 cents higher than "old" offshore gas, will apply to approximately 14 trillion cubic feet sold *prior to the date of the settlement proposal.* (See Ex. 21, Sch. 42) This provides an extra bonus of the order of magnitude of $500,000,000 to

$600,000,000. This bonus relates, not to additional gas which will be available to remedy the present shortage, but to gas already sold and delivered. There can be no consumer benefits from such a bonus, and there is no justification for it in the record or in common sense.

WHEREFORE, Memphis prays that the Commission reject the Settlement Proposal, or in the alternative that it announce that it will approve a settlement only if the provision for waiver of refunds is deleted and the provision for back-dating of the date of division between old and new gas, for ceiling price purposes, is changed to make the date October 1, 1970 or later.

Respectfully submitted,

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[11,851]

[Caption Omitted]

COMMENTS OF PLACID OIL COMPANY, *ET AL.* TO THE SETTLEMENT PROPOSAL AND REQUEST FOR MODIFICATION

COME NOW PLACID OIL COMPANY, HUNT OIL COMPANY, HASSIE HUNT TRUST, H. L. HUNT, WILLIAM HERBERT HUNT TRUST ESTATE, CAROLINE HUNT SANDS, W. H. HUNT, LYDA HUNT—HERBERT TRUSTS, LYDA HUNT—LAMAR TRUSTS, LYDA HUNT—BUNKER TRUSTS, LYDA HUNT—CAROLINE TRUSTS, LYDA HUNT—MARGARET TRUSTS, CLAUDE M. LANGTON, TRUSTEE, SECURE TRUSTS, and LAMAR HUNT, (Placid, *et al.*), pursuant to the Commission's notice of November 9, 1970, and Section 1.9 of the Rules of Practice and Procedure of this Commission, and file the following comments:

I.

The basic purpose for and the overriding goal of the Settlement Proposal is to effect a substantial increase in exploratory and developmental effort in the search for gas to satisfy the demands of all consumers supplied by the Southern Louisiana Area.[1] The volumes needed are far in excess of the volumes discovered in prior years. Therefore, the public interest and just plain common sense require that every possible effort be made to achieve

[11,852]

the maximum amount of exploration and development. We believe the following modifications of the Settlement

[1] Motion of United Distribution Companies for Promulgation of Settlement Proposal, Page 4, Article IV.

Proposal will enable many producers to increase their exploratory effort over what they could do without the modifications. We, therefore, request that the Commission modify Section 8, Refunds and Disposition Thereof, in the following respects:

FIRST, provide in substance by adding a proviso to Section 8.2.2(d) or otherwise as follows:

> "Provided, however, that in cases where a producer's total refund obligation to a purchaser is less than $250,000, the provisions of (a) above will not apply and such producer may discharge 100% of such obligation by committing gas to a purchaser to which the producer owes no refund."

We have suggested an amount of $250,000 for this purpose which we believe to be a reasonable and practical amount to accomplish the purpose. However, a limitation of $100,000 would probably provide adequate relief for the large majority of producers. According to Opinion No. 546, page 3, note 6, there were 248 producer respondents in the Southern Louisiana Area. Since the refunds for the last period, October 1, 1968, and forward, are to be computed on a percentage of amounts collected in excess of the rates established by Opinion No. 546, it is reasonable to assume that most of these 248 producers will have some refund obligation. The refund obligation of most of these producers to any one purchaser will, no doubt, be a relatively small amount. These producers cannot be expected to find separate reserves of gas to commit to each pipeline to which a refund is owed. Therefore, their only hope of discharging their refund obligations through committing gas is to make multiple sales of the gas they do find to the pipelines to which the refunds are owed, i.e., allocate the reserves to such pipelines on a proportionate basis. The pipelines would then have

to work out some kind of transportation or exchange agreement.

It is submitted that in the large majority of cases involving small volumes the time and trouble required to work out transportation or exchange agreements would more than offset any benefit to the purchaser to whom the refund is owed. Moreover, it would appear reasonable to expect that, with respect to these small volumes, most of the pipelines would receive their proportionate part of the gas as a matter of course without the requirement to commit to a specific pipeline.

SECOND, add a new Section 8.2.2(e) to read substantially as follows:

> "If a producer fails to find in the Southern Louisiana Area a sufficient volume of new gas reserves during the five (5) or seven (7) year periods to discharge its refund obligation, such producer may receive credit for reserves committed to interstate commerce from areas outside Southern Louisiana. Such credit shall be on the same basis as for reserves committed from the Southern Louisiana Area."

This credit would not be available to a producer to the extent new gas reserves are found and not committed to interstate purchasers. The purpose of this provision is to provide a means for producers who are unable to lease prospects, or who are otherwise unsuccessful, to discharge their refund obligation on a basis comparable to other producers. It appears to be generally recognized that the major prospect for new gas reserves in the Southern Louisiana Area is in the Offshore waters. Such leases, of course, are very expensive. Not only that, but the drililng and operation is very expensive. Huge sums

of money are a prerequisite to operation in this area. Moreover, it is quite possible that some of the producers who do have access to adequate financing will still be unable to purchase offshore blocks for the simple reason that they fail to bid high enough

[11,854]

to purchase any block. Other producers may be able to purchase only a small interest in one or two blocks and, if reserves are found, not have sufficient volumes to discharge the refund obligations.

THIRD, incorporate in Section 8.2.6 or add a new section to provide a reasonably definite formula for obtaining special relief for those producers who have in fact "made a sincere and diligent effort to find gas to meet its total refund obligation but has failed to do so."[2] One alternative offered by one of the non-producing participants in the settlement negotiations would permit a producer to discharge its entire refund obligation by making expenditures for exploration and development in the five (5) years, October 1, 1970, to October 1, 1975, in the Southern Louisiana Area on acreage and/or horizons not dedicated for sale on or before September 30, 1970, in amounts equal to 125% of total expenditures during the period January 1, 1965, to December 31, 1968, for exploration and development in this area. This is a simple formula. It includes exploration and development for both oil and gas and eliminates the need for the difficult breakdown between the two. We urge its adoption. However, if the Commission should conclude that relief should be limited to expenditures made in the exploration and development of only gas, the following is suggested:

[2] Settlement Proposal for Southern Louisiana Area page 25, Section 8.2.6.

8.2.6 If a producer, within thirty (30) days following the expiration of the five-year period or any extension thereof under Section 8.2.2, advises the Commission that it has remaining undischarged refund obligation and desires to exercise the option provided by this section, such producer will receive credit against the amounts remaining in the accounts maintained pursuant to Section 8.2.1 under the following procedure:

[11,855]

(a) Separate calculations will be made showing the amount of money expended on the exploration and development of natural gas within the Southern Louisiana Area for the five or seven-year period ending December 31, 1969, and for a five or seven-year period beginning October 1, 1970. For the purpose of this Section, "Money expended on the exploration and development of natural gas reserves" shall mean all costs and expenses incurred by the producer related to the exploration for and development of gas reserves.

(b) If the money expended by the producer in the exploration for and development of natural gas within the Southern Louisiana Area during the five or seven-year period following October 1, 1970, exceeds the amounts expended for the prior period, then subject to (c) below such producer may use such excess amounts as a credit on a pro rata basis as described above in Section 8.2.2 against the amounts remaining in the accounts maintained pursuant to Section 8.2.1.

(c) If a producer, during the applicable period, finds more gas than such producer commits to interstate purchasers, the excess amounts calculated under (b) above shall be reduced by multiplying such excess amounts by a fraction whose numerator is the total reserves committed by such producer to all interstate purchasers, and whose denominator is the total reserves found by such producer. Such producer may then use such reduced excess amounts as a credit as in (b) above.

(d) A report (certified by an independent auditor) shall be filed with the Commission within ninety (90) days from the end of the subject period wherein will be set out the calculations in (a), (b) and (c) above, and whether any refund amounts remain in the accounts maintained under Section 8.2.1. If refunds remain, they will be paid within such ninety (90) day period to the purchaser to whom the amounts are due with interest at 7 percent per annum, simple, from the Effective Date hereof until the first day of the month in which payment is made.

The purpose of this modification is to provide some degree of certainty so that a producer will know how much money is available for exploration. Under the provisions of the proposed Section 8.2.6, a producer has no way of knowing whether or not special relief will even be considered, let alone the governing formula or criteria until the end of the five (5) or seven (7) year period. This is not very helpful. The practical result

would be that fewer prospects would be tested under such provision than would be the case if criteria are established in advance.

Placid, *et al.* are in the business of exploring for and producing oil and gas. Each year all available funds are used for oil or gas exploration. If refunds are to be made at the end of a period, then exploration activity must be curtailed to the extent necessary to have funds available to make the refunds at the required time. It just is not possible to use money for exploration and at the same time refund it. While we cannot speak for other producers, we believe that many of the smaller producers operate in the same way that we do. Therefore, such producers need to know with reasonable certainty whether or not they will qualify for the relief before spending the money for exploration. The additional exploration made possible under the modification might result in the discovery of sufficient gas to discharge the refund obligation through the commitment of gas.

II.

United Distribution Companies in support of their motion[3] state "additional incentives are also provided in the settlement proposal by giving the producer an opportunity to substitute gas, at price levels which are in the public interest, for refund dollars." The above three (3) modifications are proposed for the purpose of making these additional incentives real. An incentive is not really an incentive unless one can take advantage of it. It is submitted that the above modifications are absolutely essential if the maximum number of producers are to be enabled to make the maximum effort in the search for new gas reserves.

[11,857]

The first proposal is a very practical one. It can have very little, if any, impact upon any pipeline company,

[3] Motion, Article V, Page 4.

distribution company or consumer. Certainly, the inequities inherent in area regulation far exceed the very small, adverse impact that any pipeline, distributor or consumer might suffer. And, more important, the impact, if any, would be connected with the commitment of new gas reserves to interstate use [4] which in itself should more than offset the impact of committing reserves to one pipeline when the reserve credit is charged to another which, as indicated above, would probably in a large part be offset among the various pipelines.

The second proposal or modification is designed to enable producers who do not have, and cannot acquire, adequate gas prospects in the Southern Louisiana Area to increase their efforts in some other areas. It would neither be prudent not in the public interest for a producer to expend funds on unfavorable prospects. Reserves found outside Louisiana as a result of incentives provided in the Southern Louisiana Area Settlement will augment the gas supply for Southern Louisiana Area consumers just the same as gas actually found in the Southern Louisiana Area.

The third proposal is designed to protect those producers who have gas prospects in the Southern Louisiana Area and who, in the testing of such prospects over the five or seven-year period, increase their expenditures over a comparable prior period, yet are unable to find reserves in sufficient quantities to discharge their refund obligations. As the settlement proposal recognizes, "it is unrealistic to expect producing companies to guarantee a specific supply of gas." [5] Making the extra

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[4] I.e., the commitment of gas to one pipeline company for refund credit when the refund is actually owed to a different pipeline company.

[5] Page 27, Section 11, Future Exploration and Development in Southern La. Area.

[11,858]

effort is all that is possible. The producer who is successful is rewarded by such success. The producer who is unsuccessful is penalized by the lack of success. Requiring a refund in addition is an additional penalty which we believe would not be in the public interest because it will discourage gas exploration.

Producers who have no refund obligation and those who find sufficient gas to discharge their refund obligations would not have a need for either of these modifications. The total amount involved under the first proposal is small, and the net impact would be insignificant because of the small amount involved and the effect of balancing between the pipelines. Producers who fail to increase their exploration and development efforts over prior periods would not be able to take advantage of the third proposal, and the producers qualifying for the second proposal would have to commit gas which is what this proposal is all about. Therefore, we do not believe that either of the proposals would adversely effect the public interest in any way.

Certainly, the benefits of any refunds made under the settlement proposal would be negligible insofar as any residential consumer is concerned. With any success at all, two-thirds (⅔rds) or three-fourths (¾ths) or more of the $150,000,000 refund obligation will be discharged through the credit by committing new gas reserves. Assuming producers are unable to discharge by credit no more than $100,000,000 over this five-year period, no real benefit would accrue to residential consumers by requiring the refunds. Approximately three-fourths (¾ths) of the remaining $50,000,000 would go to industrial, commercial and non-jurisdictional customers. What-

ever refund these consumers receive would, of course, be windfalls to them because they recovered their cost during the past period through the sales of services

[11,859]

and products. The approximate one-fourth (¼th), $12,500,000 available under our assumption to residential consumers, would average less than $1.00 per customer for the area involved.

Any refunds, required of Placid, *et al.*, will of necessity have to come out of the exploration budgets. We believe that refunds by most, if not all, other producers will also come directly out of their exploration budgets. As a practical matter, exploration will be reduced by the amount of any refunds. We submit that under any conceivable circumstances gas found by increasing exploration by $50,000,000 would be much more beneficial to all consumers, industrial, commercial, residential, and non-jurisdictional, than the refund of such amounts.

III.

The United Distribution Companies point out that evidence already introduced into the record in Docket AR69-1 conclusively demonstrates a material and growing gas shortage and the need for substantial increase in exploratory and developmental activity and the need to bring forth additional supplies of gas from the Southern Louisiana Area.[6] An increase in exploratory and developmental activity increases expenditures. We believe that higher rates for both flowing gas and new gas are a prerequisite to an exploratory level sufficient to bring forth gas supplies in quantities to meet "the demands of all

[6] United Distribution Companies' Motion, Section IV, Page 4.

consumers supplied by this area. The prices proposed will, however, provide more incentive than the prices established by Opinion 546.

In our case rates higher than those established in Opinion 546 have been collected for most sales. Many of such rates are higher than the proposed

[11,860]

settlement rates. We have already used these refund amounts in exploration and development. If the settlement proposal is adopted, some of our rates will be increased while others will be decreased. The net increase for 1971 is estimated to be $170,000 for Placid Oil Company and a total of $500,000 for all of the Hunt entities. It is, therefore, evident that Placid, *et al.*, will have very little additional money for exploration. Nevertheless, each of the parties to these comments individually represent to the Commission that it will continue its gas exploration efforts to the full extent that funds and gas prospects are available.

It is submitted that we probably expend as high a percent of our total income for oil and gas exploration as any company. Placid, *et al.*, are in the business of exploring for and producing oil and gas. The only real choices are between oil and gas and the geographic areas. The rates proposed, if approved, will enable us to do more exploration and development than we have in the past, provided, of course, that it does not become necessary to make cash refunds. Higher rates for both flowing and new gas would make it possible to do proportionately more gas exploration and development.

IV.

The "Answer of Texaco Inc. to Motion for Promulgation of Settlement Proposal" dated November 6, 1970, urged the Commission, in lieu of promulgating the terms and provisions of Section 3.3.2 contained in the settlement proposal filed by United Distribution Companies, to adopt the modified Section 3.3.2 attached as Appendix A to Texaco's Answer. It is submitted that Texaco Inc.'s alternate method of handling the contingent escalations of ceiling prices is discriminatory, unfair and not in the public interest for the following reasons:

[11,861]

1. It penalizes producers who are unsuccessful or who's success is delayed even though they put forth a genuine and diligent effort. As the Commission is well aware, the producer who makes the greatest effort may be totally unsuccessful whereas the producer making the minimum effort may discover a very large reserve. Thus, the one making the least effort, under Texaco's proposal, may be rewarded whereas the one making the greatest effort may be denied an increase. Not only does the unsuccessful producer not have new gas to sell, but he is also denied additional revenues from his flowing gas which is essential if he is to continue exploration. Texaco says, "it would seem rather inequitable from a public interest standpoint, for one company to diligently search for gas, commit such to the interstate market and attain an increase in its ceiling price, whereas at the same time, another company might not be entering into the search for gas supplies or would not commit gas found to jurisdiction sales, but would still get the benefit of the contingent price escalations." [7] We submit that it would

[7] Texaco Answer page 6.

not only seem to be, but would be, inequitable from a public interest standpoint to deny a company who diligently searches for gas by committing a substantial part of its available income and exploration budget to the search for gas, though unsuccessful, the benefit of contingent price escalations whereas, at the same time, another company who might commit only a fraction as much of its income and exploration budget to the search for gas to get the benefit of the contingent price escalation just because it discovers a reserve of gas equal to its "proportionate share" of a past period of interstate sales.

2. The method suggested by Texaco, Inc. for determining a producer's "proportionate share"[8] of new gas reserves is unfair. For example, a

[11,862]

producer who committed 100% of its gas to interstate commerce during the base period would be required to find and commit twice as many new reserves, relatively, as the producer who committed only 50% of its gas in interstate commerce during the base period. There is probably no way to establish a fair and equitable method for assigning each producer a reserve quota for contingent price escalation purposes.

3. Assigning quotas to each company and approving price increases for flowing gas on the basis of each individual company's attainment of such quota is an argument for individual company regulation as opposed to area rate regualtion. If an individual company incentive program is placed in operation, some companies are bound to find their quotas early, some not at all. This

[8] Page 3 of Appendix A to Texaco's Answer.

would complicate future rate proceedings. For example, assume that Company A reaches its full quota and gets the three-step escalation totaling 1.5¢ per Mcf whereas Company B makes twice the effort as Company A and is totally unsuccessful. This would create a difference of 1.5¢ per Mcf in the two (2) companies' flowing gas prices. In the next area rate proceeding Company A would no doubt insist that it is entitled to 1.5¢ higher rate than Company B because it had contributed more to the supply than Company B. The fact of the matter might well be that Company B, though it did not find any gas, contributed more than Company A.

4. Contrary to Texaco's argument,[9] it would be far more feasible from the standpoint of administering the contingent escalations to adopt the industry-wide basis rather than the individual company basis. Opinion 546, page 3, note 6, states that there were 248 respondents in the AR61-2 proceeding. Assuming there are still that number, the Commission would be required to monitor 248 individual records if the individual company

[11,863]

method were adopted whereas it would only have to monitor one industry-wide record if that basis were adopted.

V.

WHEREFORE, Placid, *et al.*, pray that the Commission (1) modify the settlement proposal as proposed herein with respect to Section 8, Refunds and Disposition Thereof, (2) deny Texaco Inc.'s Proposed Modification, and (3) enter an order promulgating the rates,

[9] Texaco's Answer pages 6 & 7.

terms and conditions of the subject settlement proposal as modified.

Dated this 8th day of December, 1970.

Respectfully submitted,

PLACID OIL COMPANY

Copy Original Signed By PAUL W. HICKS
PAUL W. HICKS,
Attorney

And on Behalf of:

Hunt Oil Company
Hassie Hunt Trust
H. L. Hunt
William Herbert Hunt Trust Estate
Caroline Hunt Sands
W. H. Hunt
Lyda Hunt—Herbert Trusts
Lyda Hunt—Lamar Trusts
Lyda Hunt—Bunker Trusts
Lyda Hunt—Caroline Trusts
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[11,868]

[Caption Omitted]

OBJECTIONS OF NEW YORK STATE PUBLIC SERVICE COMMISSION TO SETTLEMENT PROPOSAL AND MOTION FOR INTERLOCUTORY RELIEF

Pursuant to the Federal Power Commission's notice of November 9, 1970, the New York State Public Service Commission hereby submits objections to the settlement proposal filed November 6, 1970 by certain parties to these proceedings. The New York State Public Service Commission was active in the settlement negotiations and presented a comprehensive settlement offer, which was rejected by the producer representatives. We move that the Commission immediately review the settlement proposal and the objections to it, tell the parties what provisions should be reformed to meet legitimate objections, and reconvene the settlement negotiations.

Introduction

The extraordinary price, bonus, and refund waiver terms of the settlement proposal are a dramatic reflection of the apparent present gas shortage. We have been told by the

[11,869]

gas distributors in New York and by some of their interstate suppliers that there will be difficulty within a few years in maintaining current levels of gas delivery, much less accommodating the expanding demand for gas. The consequent bargaining strength of the producer does not however, justify the unrestrained

settlement terms. On the contrary, the bargaining strength of the producers necessitates imaginative and effective regulation by the Federal Power Commission. *United Gas Improvement Company* v. *FPC*, 290 F.2d 123, 135 (CA 5; 1961), certiorari denied U.S. 823. The settlement terms, which would be extremely costly to gas consumers, would be less objectionable for the most part if there were some assurance of gas supply, or at least an undertaking by the producers to explore for gas in the Southern Louisiana area to serve the consumers who have depended on that area. The settlement proposal contains no assurance of gas supply or undertaking by the producers to explore. We attempted to secure that assurance during negotiations, and we failed. To be sure, the settlement rewards the producers if they do dedicate new gas to interstate commerce, with a price of 26¢ per Mcf and more. The rewards grow substantially, after the dedication of certain volumes of new gas to the interstate market. The bonus and refund waiver provisions, alone, reward the producers with over $1,125,000,000 of revenues beyond those which would be received on the basis of the proposed new ceilings. However, the producers are not obligated to try to find new gas or even to commit any of their revenues to the search for gas.

[11,870]

The settlement proposal would deprive gas consumers of substantial refunds owed to them pursuant to Opinion 546. When last measured by the Commission's staff, these refunds aggregated over $375,000,000. The settlement would forgive, without any consideration whatever, all but about $150,000,000. Even with regard to the $150,000,000, there would be a waiver of refunds upon the dedicating of new gas to interstate commerce at full

price and without any discount from the applicable ceiling. Thus, a new producer can get 26¢ for selling new gas in the interstate market, but an established producer can get 26¢ and relieve itself of refund obligations as well. These inequities against consumers and among producers are unnecessary; there are other ways to resolve any undue impact on refunding by producers, which we discuss later, such as allowing them to pay refunds out of future revenues.

None of the filings in support of the settlement proposal attempt to show the reasonableness of the price, bonus, and refund waiver terms of the settlement. As we explain below in more detail, our view is that the settlement terms cannot be shown to be just and reasonable. The New York State Public Service Commission, responsible within the State for protecting consumers' interests, shares the Federal Power Commission's concern about gas supply. If there is no way to impose reasonable limits on the demands of the producers, there is little that we or the Power Commission can do to assure a finding effort commensurate

with the demand for gas. On the assumption that there is a reasonable limit to producer demands, we submit that the Power Commission should review the settlement proposal and the objections to it, advise the parties what provisions should be reformed to meet legitimate objections, and reconvene the settlement negotiations. In the meantime the Commission should proceed with an expeditious determination of the just and reasonable rates for gas in the Southern Louisiana area, especially the rates for new gas.

Objections of New York State PSC to Settlement Proposal

I. The settlement proposal contains no supply assurance by the producers, not even an undertaking by them to explore for gas or to develop gas, that might justify some of the waiver of refunds and extraordinary price terms in the settlement proposal.

The settlement proposal does not obligate any producer to find any gas, to try to find any gas, or even to suffer a price adjustment if the producer does not try to find any gas. Despite the effort of the New York State Public Service Commission and others to secure a commitment from the producers, not one producer broke ranks to say that it would commit itself to try to find gas in return for the many settlement terms favorable to the producers. The case is made worse by the substantial increases in the price for flowing gas, where the incentive effect is debateable at best.

We recognize, as everyone does, that producers cannot guarantee the discovery of substantial amounts of gas. The producers are capable, however, of undertaking to *try* finding gas

[11,872]

within a geographic area and within a time period of a few years. However, throwing out vague suggestions that they may do so is the sole *quid pro quo* in the settlement. In our settlement proposal, the New York State Public Service Commission attempted to secure from the producers a guarantee that they would either find a stated amount of gas (based on the producer's prior finding experience) or at least a certain amount of money in an effort to find gas (based on prior expenditure experience). However, the producers resisted all efforts to secure their commitment to try to

find gas. Nor would the producers entertain our suggestion that in the absence of an effort to find gas, the settlement ceiling rates should be adjusted downward. In our view, if a producer does not either find gas or spend money trying, it is not entitled to high prices.

There are two major provisions in the settlement which are related to supply. While these provisions afford extraordinary rewards (inducements) if producers do find and dedicate gas, they do not impose any obligation on the producers to find gas or to try to find gas. Section 3.3.2 of the settlement proposal provides a bonus, in the form of an escalation of the ceiling prices for old gas (above the increased prices set forth in the proposed settlement) upon the finding of certain amounts of new gas and the dedication of that new gas to interstate commerce. The bonus provision is analyzed in more detail at part III. A, below. At this point we emphasize that the bonus

[11,873]

provision imposes no obligation on any producer and indeed, under the peculiarities of Section 3.3.2, a producer who exerts no effort to find new gas will enjoy a full share of the bonus if other producers find and dedicate stipulated amounts of new gas.

Section 8 of the proposed settlement also relates to gas supply, affording the producers an opportunity to relieve themselves of their residual refund obligation upon the finding of new gas and the dedication of such new gas to interstate commerce. Section 8 is analyzed in more detail at part III. B, below. At this point we emphasize that the producers need exert no finding effort to be relieved outright of over $225,000,000 (over 60%) of their refund obligations. As to the remaining refund

obligation, the producers may either pay it or be free of refunds by dedicating new gas to interstate commerce. The dedications are entitled to the full stated new gas ceiling price of 26¢ per Mcf, plus periodic escalation, etc. Finally, if the producer tries to find new gas and fails, it may still be entitled to waiver of its refund obligation. See Section 8.2.6. From the consumer viewpoint, the consumer loses most of his refund entitlement in return for either (a) a fractional refund or (b) some new gas at a high (unreduced) price.

The notable absence of any producer's commitment to supply gas or to try to find gas, and the producers rejection of any commitment, is ominous from the consumer viewpoint. From

[11,874]

the regulatory viewpoint, if the settlement terms do not induce the producers to commit themselves expressly to a finding effort, the Federal Power Commission can have little hope of appraising the gas supply that the settlement will bring forth. Compare 428 F.2d at 444.

II. The hodge-podge of settlement terms has not been and cannot be rationalized and justified according to court approved standards.

The Court of Appeals has formulated the standards that the Commission must use in making and explaining its determinations in future rate cases, including a requirement that the Commission "estimate the supply that a given rate will elicit." 428 F.2d 407, 441-445, 444. The Power Commission appears to accept and applaud those rigorous standards. *Southern Louisiana Area Rate Cases,* United States Supreme Court (October

term, 1970) Nos. 669, 680-685, 691 and 692, brief for the Federal Power Commission in opposition to petition for writ of certiorari (filed October 21, 1970), pages 14-15. It would be difficult enough for the Commission to estimate what the supply would be at the stated ceiling price for new gas of 26¢ per Mcf, compared (say) to what the supply would be at 25¢. We think it will prove impossible for the Commission to evaluate the total settlement proposal, with its labyrinthian contingent provisions for bonuses and refund waivers, in light of the approved standards. We explain below our objections to the bonus and refund waiver provisions of the settlement proposal and our objections to miscellaneous auxiliary provision.

[11,875]

A. The bonus is unjust, unduly discriminatory, preferential, and unlawful.

1. The bonus will cost the consumer about 5¢ per Mcf of new gas, in addition to the stated ceiling of 26¢ and the periodic escalation of 1¢ per Mcf.

If the producers succeed in finding new gas and dedicating it to the interstate market pursuant to Section 3.3.2 of the settlement proposal, the bonus provision will in effect cost gas consumers the equivalent of an extra 5¢ per Mcf for the 15 billion Mcf of new gas. The settlement proposal does not directly provide a bonus in the new gas price. Instead, the settlement provides for 1.5¢ increase in the *old* gas ceiling price upon the dedication of 15 billion Mcf of new gas to interstate commerce. The net effect, however, is that gas consumers will pay about $750,000,000 more when and if 15 billion Mcf

of new gas have been dedicated to interstate commerce, which amounts to an extra 5¢ per Mcf of new gas.[1]

There may not be enough new gas dedicated to interstate commerce to give rise to the bonus. However, if there is enough new gas found and dedicated, the bonus provisions substantially

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increase the effective cost of new gas to gas consumers. Before approving the bonus, the Power Commission would, we submit, be obligated to find that the bonus was necessary to elicit some measured amount of new gas. Finally, while the bonus rewards the producers for finding 15 billion Mcf of new gas and dedicating it to interstate commerce, it does not obligate them to find that volume of gas or obligate them even to try to find that volume or any other volume of gas.

2. As formulated, the bonus provision imposes extra charges on gas consumers who get no new gas.

Under Section 3.3.2 of the settlement proposal and the Texaco variation, the bonus for finding new gas is

[1] We estimate the bonus at about $750,000,000 according to the following calculations: At the end of 1968 there were about 66.1 trillion cubic feet of gas dedicated to interstate pipelines in the Southern Louisiana area. See *The Gas Supplies of Interstate Natural Gas Pipeline Companies*, 1968, FPC Bureau of Natural Gas, January 1970. Some of that flowing gas will have been depleted, of course, by the time enough new gas could be found to generate the bonus; but there will also undoubtedly be additions of developmental reserves that will be subject to the flowing gas ceilings and to the bonus. Accordingly, we estimate that there may be about 50 trillion cubic feet of flowing gas entitled to the penny-and-one-half bonus if and when the producers find the necessary new gas. This equals $750,000,000 payable on account of finding 15 trillion cu. ft. of new gas, or an extra 5¢ per Mcf, equivalent to 31¢, plus escalations.

chargeable to gas consumers who get no new gas. Suppose, hypothetically, that producer X sold all its gas from Southern Louisiana to Natural Gas Pipeline Company under contracts dated prior to October 1, 1968, and that in a future year it discovers new gas which it sells to Transco and thereby triggers the bonus provisions. Gas consumers in Chicago will be chargeable with the bonus for new gas that is being burned in New York. While there may be offsetting situations, only by coincidence would consumers who pay the bonuses on old gas receive proportional benefits in the new gas supplies on which the bonuses are predicated. The bonus provisions as formulated can only be described as discriminatory and preferential, or (possibly) capricious.

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3. As formulated, the bonus is anti-competitive.

Section 3.3.2 of the settlement proposal, as well as Texaco's proposed variation on the bonus theme, is designed to reward sellers of old gas for the finding and dedication of new gas. Accordingly, the bonus is preferential in favor of established producers, who have gas to sell under existing area contracts, and is prejudicial to the entry of certain pipeline producers and other potential newcomers to the Southern Louisiana area. The prospect of a bonus affords established producers in the area the opportunity, for example, to bid higher on prospective gas leases than newcomers could, for reason that established producers can, on the average, achieve the equivalent of 31¢ per Mcf for new gas (see II. B1 above), plus periodic escalation, whereas newcomers are limited to the 26¢ ceiling plus periodic escalation. This anti-competitive feature of the bonus proposal raises serious

anti-trust questions. We submit that the issue should be referred to the Justice Department for advice about the illegality of the bonus provision as formulated.

4. As formulated, the bonus is prejudicial against the interstate market after a few years.

We demonstrated in argument A1 above, the bonus raises the effective price of new gas from 26¢ to about 31¢ per Mcf for each of the 15 billion Mcf of new gas found and dedicated to interstate commerce. However, a strange effect of the bonus provision as formulated, is that the next Mcf of new gas (beyond the 15 billion Mcf) reverts back to a price of 26¢ per Mcf plus

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periodic escalation. That is, after the 15 billion Mcf are found and dedicated, additional dedications do not give rise to any bonus or price increase that might effectively raise the new gas price above the stated ceilings of 26¢ plus escalation. In the meantime, however, the *interstate* market will have to pay about 31¢ per Mcf of new gas in order to attract any Southern Louisiana gas out of the interstate market. After the 15 billion Mcf of new gas is found and dedicated to interstate commerce, the intrastate market price for gas will still be about 31¢ (or 32¢ with escalation) but the interstate price will (unless the FPC yields further) fall back to the ceiling level of 26¢ (or 27¢ with escalation). Consequently, within a few years the effect of the settlement proposal will be to prejudice the interstate market in favor of the intrastate market. Of course, if we may be permitted some prophecy, the producers will promptly argue that the prejudice should be corrected and the stated ceiling price for interstate gas sales should be raised to

31 or 32¢, in order to permit gas to flow into the interstate market. This analysis confirms our argument in B1, above, that the effective price for new gas is 31¢ plus escalation, not the stated ceiling of 26¢ plus escalation. Texaco's alternative bonus proposal does not appear to cure these defects.

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5. As formulated, the bonus rewards established producers who find no new gas; any bonuses for finding new gas should apply directly to only the finder's new gas prices.

The settlement proposal bonus provisions allow an increase in the area rate for old gas upon the dedication of certain volumes of new gas to interstate commerce. If Shell or Superior dedicate no "bonus volumes" of new gas to interstate commerce but Texaco and Mobil dedicate substantial volumes, Shell and Superior are nevertheless entitled to the bonus under the settlement, a result that is bizzare and discriminatory; worse, it is discouraging to the exploration for gas, especially in situations where the lion's share of the benefits would go to producers exercising no efforts to find gas.

Under the settlement proposal, Shell and Superior's new gas may be dedicated to reducing their refund obligations and then would not count toward generating the bonus. Yet, if *other* producers found enough gas, Shell and Superior would get both the refund waiver and the bonus. Likewise, even if Shell or Superior or any producer finds *no* new gas it is entitled to the bonus if the other producers find the new gas and dedicate it to interstate commerce pursuant to Section 3.3.2 of the settlement. That section must be reformed or disapproved.

We do not know whether any bonus, or what amount of bonus, can be rationalized and justified according to applicable rate making standards. We do think, however, that any bonus

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would need to satisfy two criteria: The bonus should run in favor of the finder of the gas, and it should apply to the finder's new gas prices. Texaco explains in its filing why the bonus should run only in favor of the finder of new gas and should not give rise to an area-wide increase in gas ceilings. However, Texaco's proposal remains faulty because its bonus takes the form of increasing the finder's old gas ceilings, not its new gas ceilings. Accordingly, the Texaco bonus proposal is anti-competitive against potential newcomers, who have no old gas that can enjoy a price increase. The Texaco proposal is likewise potentially chargeable to gas consumers who get no new gas. See A2 above. The only cure that we can see is for the bonus to attach to new gas prices after the bonus volumes have been found, thus directing the incentives to those who find the gas, and imposing the costs of the bonuses on the consumers who receive the gas.

B. Refunds should not be waived.

1. Refunds should not be waived at all.

The staff of the Federal Power Commission calculated that Opinion 546 generated over $375,000,000 of refunds and interest. Since those estimates, additional refunds and interest have accrued. Section 8 of the settlement proposal would waive outright all but about $150,000,000 of the refund obligation. The remaining $150,000,000 of refund obligation would be contingently waived, that is, waived to the extent that ogligated

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p oducers find new gas and dedicate it to interstate commerce without price adjustment. We object to the waiver of refunds. The gas consumers of America have a vested right to those refunds. The Court of Appeals has authorized the Commission to deprive consumers of that right only upon a well demonstrated showing and explanation why consumers should be deprived of their refunds. We submit that no such showing can be made.

2. The waiver of refunds is discriminatory against consumers and among producers.

If the price and refund waiver terms of the settlement proposal, taken together, provide a reasonable inducement to an adequate exploratory effort, the settlement is unduly preferential in favor of certain producers. Three producers account for about 40% of the calculated refund obligation: The Superior Oil Company, $69,000,000; The California Company, $42,000,000; and Shell Oil Company, $37,000,000. Thus, a high percentage of the overall inducement would run to these producers, for no reason we can discern. On the other hand, if the price terms, considered separately, provide a reasonable inducement to an adequate exploratory effort, the waiver of refunds is unnecessary and accordingly unreasonable. We submit that the best course for the Commission is the straightforward one; the Commission should either approve a reasonable settlement or fix a reasonable rate for gas and put aside any proposal to waive refunds.

Section 8.2 of the settlement proposal states the possibility of some refunds but makes them subject to waiver upon the dedication of new gas reserves to interstate commerce:

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Briefly stated a penny of refunds is waived for each Mcf of new gas dedicated to interstate commerce. As formulated these special provisions are discriminatory among producers and among consumers. If producer A dedicates new gas to interstate commerce and thereby is relieved of a refund obligation, the producer gets the stated ceiling price of 26¢ plus a penny of refund relief or, in effect 27¢ per Mcf. If producer B has no refund obligation and dedicates new gas to the interstate commerce, that producer is limited to 26¢ per Mcf. Of course, both are ultimately entitled to the periodic escalation and bonus provided in the settlement proposal. (However, under the Texaco alternative bonus provision, producer A is less likely to achieve a bonus than producer B.) Furthermore, the settlement proposal allows producers to dedicate gas to pipelines to which it owes no refunds and nevertheless relieve itself of part of its refund obligation. For example, if producer A owes Natural Gas Pipeline Company one million cents in refunds, it may wipe out its refund obligation by dedicating 500,000 Mcf of new gas to Natural Gas Pipeline Company and 500,000 Mcf of new gas to Transco. Gas consumers in Chicago will in effect pay 28¢ per Mcf, that is, they will pay the stated ceiling of 26¢ per Mcf plus a loss of 2¢ per Mcf in refund entitlements (the loss of one million cents of refund entitlement upon receipt of 500,000 Mcf of new gas). In this example, the settlement proposal is discriminatory against gas consumers in Chicago and in favor of gas

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consumers in New York. Although there will undoubtedly be countervailing cases, we submit that the settlement

proponents cannot carry the burden of demonstrating that the settlement will be free of any unduly discriminatory effect.[1]

3. The waiver of refunds betrays past settlements and accordingly jeopardizes the settlement process.

There is another, special defect in the refund waiver section of the settlement proposal. A substantial portion of the refunds (before waiver) are due from producers who did not settle Section 7, Section 5, or Section 4 rate cases. Other producers, who did settle in the past, settled at rates which were often below the rates at which partial refunds are to be calculated according to the settlement proposal. They made refunds and agreed to moratoria against rate increases. The more favorable treatment of producers under the present settlement proposal is a betrayal of past settlements and a reward for intransigence. We fear that, at this stage, approval of the refund waiver terms of the settlement proposal will jeopardize the settlement process, by encouraging producers to hold out indefinitely for more favorable treatment later. To the extent producers did not previously settle, they took their chances on the Commission's area rate determiantions which have been made, reviewed and affirmed. *Southern Louisiana Area Rate Cases*, 428 F.2d 407.

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[1] The provisions for interest are peculiarly discriminatory in favor of refund obligors. Section 8.2 cuts off the accrual of interest, so that these producers have an interest-free loan for up to five years. If the refunds are by then played off against new gas dedications, no interest arises for the period.

Even if some refunds remain due then, the producer owes only 7% simple interest for the 5 years on the remaining amount due. Other producers pay more for money borrowed from other sources.

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4. If necessary, refunds can be played out against future revenue; waiver is not necessary.

To the extent the Commission finds that the making of refunds substantially reduces the potential gas supply, and explains how and to what extent that occurs, refunds still need not be waived. The Commission may instead allow producers to play out their refund obligation by returning future revenues or to reduce their refund obligation by dedicating new gas to interstate Commerce at less-than-ceiling prices. If the stated ceiling rate is reasonable for adequate exploration, but the less-than-ceiling rate is not, other producers with little or no refund obligation will fill the void and undertake the search that might somehow be less attractive to the refund obligors. However, avoidance of refunds by dedicating new gas, even below ceiling, would constitute a strong drilling inducement to producers with refund obligations.

5. Residual claims for refund waivers should be resolved in "special relief" cases after settlement or decision of area rate issues.

The proposal to waive refunds will bog the Commission down in an investigation of imponderables. The impact of waiving refunds *vel non* on gas supply cannot, in our view, be determined according to any formula. Determining the impact of waiving

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refunds on gas supply will require close company-by-company investigations of cash flows from all company sources, the tax consequences of waiver, etc.

The individual company circumstances that might warrant refund waiver in extraordinary cases can only be resolved in "special relief" cases, a process that has been established by the Commission and recognized and approved by the Supreme Court. *Permian Area Rate Cases,* 389 U.S. 747, 764-748. The Commission should proceed to review, fix, and enforce area rates after settlement or decision without awaiting the outcome of the special relief cases. *Ibid.*

C. Other provisions

1. *Definitions*

Section 1.2 defines "on-shore" and "off-shore" in a way that does not cover certain lands including an air-force base, etc. that are subject to exclusive federal jurisdiction and not subject to Louisiana production, severance, gathering or similar taxes. Accordingly it is unclear whether the on-shore or off-shore price applies to the sometimes substantial volumes of gas produced on these federal lands. In our view the off-shore ceiling price should be applicable to gas produced on these lands.

2. *Opinion 575*

Section 2.7 makes the settlement proposal inapplicable to the *Rayne Field* and *Bastian Bay Field* proceedings. Opinion 575 determined the issues in several certificate cases involving sales from Southern Louisiana; these issues, long resolved

and at rest, should not be reopened and made subject to the proposal. Section 2.7 should likewise exclude the Opinion 575 proceedings from the settlement proposal.

Objections of New York State PSC to Settlement Proposal

3. *Producer Transportation*

Section 3.5 allows producers the cost of bringing gas in from the off-shore area past the "Chapman Line"; but producers are allowed no less than a penny for such transportation. The one-cent minimum for producer transportation has not been shown proper—for reasons of insignificance, administrative convenience, or otherwise—and should not be approved.

4. *Pipeline Tracking*

Sections 4.6 and 4.7 allows a pipeline to track producer rate increases according to a specified formula, unless or until the pipeline is otherwise authorized to use a tracking procedure or purchased gas adjustment, in its tariff. The Power Commission is now investigating in the proceeding in Docket R-406 the propriety of allowing pipelines a purchase gas adjustment provision in their tariffs. The Commission has recognized that purchased gas adjustment provisions may appropriately differ among pipelines depending on differing pipeline company circumstances. Accordingly the tracking provisions in Section 4.6 and 4.7 of the settlement proposal should be conditioned so that a pipeline would be obligated to make additional refunds to the extent any ultimately approved purchased gas adjustment for that pipeline would have generated the additional refunds. Likewise the Commission

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should order that the tracking provision in Section 4.7 be included, at least temporarily, in each pipeline tariff for the pipelines that use the stated formula.

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Objections of New York State PSC to Settlement Proposal

5. *Pipeline Transportation of Producer Liquids*

The settlement proposal purports to establish that pipelines may transport producer liquids under existing contracts not subject to Docket R-338 and charge the full cost of the transportation to gas consumers (except to the extent that the producer is contractually obligated to pay the pipeline a transportation fee). The gas consumer should not be chargeable for such transportation; the pipeline's transportation costs should be subject to adjustment or allocation in pipeline rate determinations.

For future contracts and contracts subject to Docket R-338, the settlement purports to impose minimum transportation charges on producers (for the carriage of their liquids), but does so only prospectively. The minimum charges should apply for the full period that the contracts were made subject to Docket R-338, as the order in that proceeding provides.

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III. The Commission should immediately tell the parties what settlement provisions should be reformed to meet legitimate objections and should reconvene settlement negotiations; in the meantime the Commission should proceed expeditiously to determine just and reasonable rates for the Southern Louisiana Area, especially the ceiling rate for new gas.

We have attempted to explain the respects in which the settlement proposal is unreasonable, discriminatory, capricious, or otherwise unlawful. The Commission should review the settlement proposal and the objections to it. In our view, many provisions are wholly unreasonable

and unlawful, and the proponents should not be sent to waste valuable time in evidentiary proceedings attempting to justify these provisions. Instead the Commission should immediately advise the parties what settlement provisions it thinks are improper and should reconvene the settlement negotiations so that the settlement may be reformed. In the meantime, the Commission should proceed with evidentiary hearings so that reasonable rates may soon be determined if the negotiations fail. We urge the need for expedition, especially with regard to new gas. Delay is against the interest of the gas consumers of New York State and other States. We support reasonable rate determinations and settlements. However, the settlement proposal, as it stands, has not been and cannot be justified.

/s/ Alan J. Roth

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CERTIFICATE OF SERVICE

I hereby certify that on this day I will serve the foregoing document upon all parties of record in this proceeding in accordance with the requirements of Section 1.17 of the Rules of Practice and Procedure by mailing a copy thereof to each party. Dated at Albany, New York this eleventh day of December, 1970.

/s/ Alan J. Roth
ALAN J. ROTH
Executive Assistant to the Chairman of the New York State Public Service Commission

[11,890]

[Caption Omitted]

CONCURRENCE OF SIGNAL OIL AND GAS COMPANY IN ANSWER BY INDICATED PRODUCERS TO MOTION FOR PROMULGATION OF SETTLEMENT PROPOSAL

Pursuant to the Secretary's Notice dated November 9, 1970, in the above-captioned matter and in reliance upon the privilege provided by Section 1.18(e) of the Commission's Rules of Practice and Procedure, Signal Oil and Gas Company (Signal) hereby concurs in the "Answer by Indicated Producers to Motion for Promulgation of Settlement Proposal", dated November 6, 1970, and filed by Shell Oil Company, *et al.*

Wherefore, Signal requests that the Commission enter an order promulgating the rates, terms, and conditions of the settlement proposal filed in these proceedings on November 6, 1970, by the United Distribution Companies.

Respectfully submitted,

SIGNAL OIL AND GAS COMPANY

By /s/ James D. McKinney, Jr.
JAMES D. MCKINNEY, JR.
ROSS, MARSH & FOSTER
725 - 15th Street, N.W.
Washington, D. C. 20005
Its Attorneys

Dated at Washington, D. C.
this 11th day of December, 1970.

[11,892]

[Caption Omitted]

ANSWER IN OPPOSITION OF THE AMERICAN PUBLIC POWER ASSOCIATION

In response to the "Motion of United Distribution Companies for Promulgation of Settlement Proposal," the American Public Power Association (APPA) hereby files its Answer in Opposition, showing as follows:

1. APPA represents some 1,400 publicly owned electric power systems. A number of them own generating plants which consume gas. Others purchase power from privately owned utilities which generate power by utilization of gas as a fuel. The interests which APPA represents are thus consumer interests, directly affected by the cost of gas and the availability and adequacy of its supply for the generation of electric energy.[1] The outcome of the Southern Louisiana gas case will affect the terms on which gas is available from other parts of the country, just as the Commission's decision in the Southern Louisiana case was affected by its decision in the Permian Basin case.

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2. APPA is not a party to the proposed settlement agreement, and was not consulted during its negotiation.

3. In Opinion No. 546 issued September 25, 1968, in the *Southern Louisiana Area Rate Proceeding* (Docket AR 61-2), 40 F.P.C. 530, the Commission determined and promulgated rates which it found to be just and reason-

[1] Some municipalities which are members of APPA own gas distribution systems. In that capacity they are represented by the American Public Gas Association.

able "area rates" for gas produced in that area. The Commission in Opinion No. 546-A, issued March 20, 1969, at 41 F.P.C. 301, modified its Opinion in certain respects, but re-affirmed that the rates established in Opinion No. 546 were just and reasonable. Opinions Nos. 546 and 546-A were sustained in full by the United States Court of Appeals for the Fifth Circuit on March 19, 1970, in *Austral Oil Co.* v. *FPC*, 428 F.2d 407. Petitions for rehearing were denied by that Court June 16, 1970. Petitions for certiorari were denied by the United States Supreme Court December 7, 1970. The Commission's order setting just and reasonable rates for gas produced in the Southern Louisiana area is now final (but see paragraph 4 below).

4. On March 20, 1969 (the same date as that of the FPC opinion on rehearing, No. 546-A), the Commission ordered (41 F.P.C. 378):

> ". . . an investigation, hearing, and rule-making proceeding be instituted to determine whether the just and reasonable area ceiling rates prescribed in Opinions No. 546 and 546-A which are applicable to sales of third vintage gas-well gas from the offshore Southern Louisiana area encompassed by this proceeding should be raised and any such increased ceiling made applicable to sales of such third vintage gas-well gas being made subject to refund pursuant to increased rate filings authorized by ordering paragraph (A) of Opinion No. 546-A, and whether fourth vintage area rate ceilings should be established applicable to sales of gas-well gas from

> the area encompassed herein pursuant to contracts dated at some date after the final order in this proceeding to be specified herein."

These proceedings are now under way.

5. The Fifth Circuit Court of Appeals, in affirming the Commission's Orders 546 and 546-A, took note of its order of March 20, 1969, instituting the new proceedings that are now in course, and laid down certain guide lines to govern it. The Court said, 428 F.2d at 444:

> "In evaluating its rate, then, the Commission should go through the following three steps relating to industry performance. It should first estimate the needs of consumer service—in this case, the demand for gas. Next, it should use this determination to fix the level of service at which it is aiming, explaining how that level is related to actual demand in the event demand is not to be fully satisfied. It must then make findings, as specifically as possible, as to how the rate it has set will affect the industry's tendency to meet that level of service. This last step means estimating the gas supply that the rate will bring forth. These are difficult matters to predict, but that is more reason why a reviewing court should not be required to guess at them."

6. The proposed settlement agreement would abort the rate review proceeding now under way in the Commission. The agreement would make the following changes in the rates which the Commission established:

Category	Commission's Rates (cents per MCF)	Settlement Rate	Percent Increase
1. Gas sold under contracts dated before Jan. 1, 1961			
(i) Gas subject to Louisiana production tax	18.5	22.375	20.9%
(ii) Gas not subject to Louisiana production tax	17.0	21.375	25.7%

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Category	Commission's Rates (cents per MCF)	Settlement Rate	Percent Increase
2. Gas sold under contracts dated on or after Jan. 1, 1961, but prior to Oct. 1, 1968			
(i) Gas subject to Louisiana production tax	19.5	22.375	14.7%
(ii) Gas not subject to Louisiana production tax	18.0	21.375	18.7%
3. Gas sold under contracts dated on or after Oct. 1, 1968			
(i) Gas subject to Louisiana production tax	20	26	30%
(ii) Gas not subject to Louisiana production tax	18.5	26	40.5%

In addition, the proposed settlement agreement provides for escalation of .5 cents per MCF, October 1, 1973, on ceiling prices under contracts dated prior to October 1, 1968, and 1¢ per MCF October 1, 1974, on ceiling prices under contracts dated after October 1, 1968 (and also on newly discovered reservoirs on acreage committed by contracts dated prior to October 1, 1968). Beyond this, three successive escalations of .5 per MCF are provided on the ceiling prices applicable to contracts dated prior to October 1, 1968, when total new gas reserves increase (1) to 7.5 trillion CF, (2) to 11.25 trillion, (3) to 15 trillion. Thus total escalation of 2 cents will be added to ceiling prices applicable to pre-1968 contracts, producing total increases of the order of 40 percent in rates confirmed by the Court of Appeals nine months ago.

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7. There is no record to support the figures used in the proposed settlement agreement.

No quantity is stated with respect to reserves now existing. This information, which the Commission's Opinion 546 reports has not been forthcoming (30 F.P.C. 554), is promised by the proposed settlement agreement, but apparently only if the price increase is approved. There is, therefore, no presently disclosed basis for equating the price increase with an increment of reserves above present levels, these being undisclosed. The Court approved rates provide a return of 12 percent on the total investment (13.3 percent on the equity capital). The settlement agreement does not disclose what the rate of return will be if the proposed rates are approved. Manifestly, the calculation of the increased rate of return, and the necessity for it, remain to be justified on a record. It should be noted that the Commission reported that it was unable to find that federal income taxes are paid on this revenue by the producers (30 F.P.C. 582), and this return, present and prospective, must be assumed to be net of federal income tax. The Commission is invited by the agreement's sponsors to ignore the mandate of the Circuit Court of Appeals as to the "three steps" (paragraph 4, supra) that the Commission should take. The settlement proposal simply establishes greatly increased rates, in the hope that these higher rates will provide the necessary incentive for an increase in exploratory and development activities. This falls far short of the statutory goal recognized by the Fifth Circuit in the Austral case. To approve the settlement proposal the Commission must assume (1) that there is a genuine gas

supply shortage, (2) that increased rates are required to remedy the gas supply situation, and (3) that the rates set forth in the settlement proposal are required, but are no more than those required, to satisfy the "just and reasonable" standard of the

Natural Gas Act. *City of Detroit* v. *FPC*, 230 F.2d 810 (D.C. Cir. 1955), *cert. denied*, 352 U.S. 829 (1956). These are assumptions which the Commission is not empowered to make, absent a record and findings, *Public Service Comm. of N.Y.* v. *FPC*, No. 23446 (D.C. Cir., June 29, 1970). The Fifth Circuit expressed dismay at the absence of findings based on substantial record evidence on these very points. The Commission cannot sidestep its regulatory responsibilities by approving a settlement proposal which in effect presumes the result of issues now squarely before the Commission in the proceedings to which the Fifth Circuit decision alluded in confirming the rates which the settlement proposal would abrogate. If these court-approved rates are to be amended, it must be by the process which the court specified in approving them. The regulatory abdication invited by the settlement agreement's sponsors would violate the mandate of the Fifth Circuit, which envisioned specific findings on these crucial issues. See *Public Service Comm. of N. Y.* v. *FPC*, *supra*.

8. The settlement proposal is an unlawful attempt to retroactively set rates without according due process to affected consumers. E.g., *FPC* v. *Hope Natural Gas Co.*, 320 U.S. 591, 618 (1944); *Montana-Dakota Util. Co.* v. *Northwestern Public Service Co.*, 341 U.S. 246, 254 (1951), and see 341 U.S. at 258 for concurrence of the dissenting opinion on this point; *FPC* v. *Sunray DX Oil Co.* 391 U.S. 9, 24 (1968). To the same effect are decisions of the

Circuit Courts of Appeals. *State Corporation Commission of Kansas* v. *FPC*, 215 F.2d 176, 183 (C.A. 8, 1954); *Hope Natural Gas Co.* v. *FPC*, 196 F.2d 803, 805 (C.A. 4, 1952).

9. Pursuant to the Commission's Opinion No. 546, $376 million in refunds are due and owing to consumers. The settlement proposal would immediately forgive $226 million of these refunds and would permit the affected producers to retain the remaining $150 million subject to liquidation at the rate of 1¢ per MCF on the future commitment of new gas reserves. This concept, whereby the ratepayer is called upon to contribute the capital as well as the fair return on the capital, is contrary to established ratemaking principles under the Natural Gas Act. E.g., *FPC* v. *Hope Natural Gas Co.*, 320 U.S. 591 (1944); *Texas Eastern Transmission Corp.*, 39 F.P.C. 630 (1968). Further, the manner in which the producers are permitted to work off the arbitrarily reduced refund obligation can nullify the refund obligation entirely, as set forth below:

a. The refund commitment of the producers as to the $150 million can be extinguished through new reserve additions, even those that might be made anyhow in the ordinary course of business.

b. The settlement proposal virtually insures that any producer which is unable to work off its refund obligation in the normal course of business will be excused from performance of that obligation. Section 8.2.5 provides (1) for an automatic extension of two years for any producer which at the end of the five-year period has discharged 65 percent or more of its aggregate

obligation and (2) for a discretionary extension of two years more for any producer which at the end of the five-year period has not discharged at least 65 percent of its refund obligation but which has made a "sincere and diligent effort to discharge its refund obligations." Ad-

ditionally, for those producers granted the two-year extension a "corporate warranty contract" committment (i.e., contract between a producer and purchaser whereby the producer warrants that it will deliver to the purchaser a specific volume of gas from new gas reserves in the Southern Louisiana area for a fixed period not to exceed 20 years, at stated prices and conditions) may also be used to obtain refund credit. Section 8.2.6 provides that any producer unable to satisfy its refund obligation within the five (or seven) year period may nevertheless petition the Commission for forgiveness of the remaining refunds where "it has already made a sincere and diligent effort to find gas to meet its total refund obligation but has failed to do so."

c. The definition of "New Gas Reserves" in Section 1.4 as meaning the "estimated original recoverable reserves in place" is inadequate in that no consequence attaches to discrepancies between the quantities of original estimated recoverable reserves, and the quantities actually proved recoverable. The fact that "the reserve estimate shall be subject to review by the Staff of the Commission" establishes only a discretionary spotcheck procedure without adequate consumer safeguards.

10. The Commission itself, in Opinion 546, recognized that an agreement between producers and distributors, who, in turn, can pass along rate in-

[11,900]

creases to consumers, is no substitute for the protection of the consumer which the statute requires of the Commission. That opinion said (p. 554):

> "Another factor inherent in the consideration of contract prices is the relative bargaining position of sellers and purchasers. We considered this prob-

lem in *Permian*, and concluded that the pipelines purchasing gas in the Permian Basin were so disadvantaged in their bargaining position as to invalidate the concept of regulation by contract price. We reach the same conclusion here. This record discloses that eight independent producers in Southern Louisiana accounted for over 50 percent of 1960 sales under FPC rate schedules (interstate sales). The record here does not disclose any data showing the amount of uncommitted reserves controlled by any producer or group of producers, but the pattern of sales commitments and annual deliveries indicate that a small number of sellers control a large percentage of the gas reserves in Southern Louisiana. We point out that while the necessary information concerning uncommitted reserves is exclusively in the possession of the producers themselves, they have made no showing to rebut a conclusion that there is a concentration of control over the uncommitted reserves in Southern Louisiana.

"The large interstate pipeline purchasers in Southern Louisiana periodically require the long-term commitment of large blocks of reserves, as we have pointed out. At any one time the latitude available to the pipelines as to reserve sources or purchasing timing is very circumscribed. Only a few producers may have the necessary volumes available for initial commitment at the moment. Moreover, pipelines pass their gas purchase outlays on to distributors, and ultimately to consumers, through the pipelines' regulated, cost-based resale rates, which is a factor tending to dilute their bargaining motivations. This entire situation enhances the bargaining power of the sellers and often tends to make price a second level consideration to the purchaser.

"Based upon this analysis we must conclude that there are serious market imperfections which preclude us from relying upon the free operation of

the market, as evidenced by arms'-length bargaining, to protect the ultimate consumer from unreasonable purchased gas rates.

"This conclusion is entirely consistent with the judicial determinations relevant to the issue of contract prices."

[11,901]

The Second Circuit Court of Appeals, in another case, stated the Commission's duty in an even more astringent manner, saying that the Commission's role, as representative of the public interest, "does not permit it to act as an umpire blandly calling balls and strikes for adversaries appearing before it; the right of the public must receive active and affirmative protection at the hands of the Commission." *Scenic Hudson Preservation Conf.* v. *FPC*, 354 F.2d 608, 620 (2nd Cir. 1965), *cert. denied*, 384 U.S. 941 (1966). Cf. *Secretary of the Interior* v. *FPC*, 387 U.S. 428 (1967), the High Mountain Sheep case.

WHEREFORE, the American Public Power Association respectfully requests that the motion for promulgation of the settlement proposal be denied.

Respectfully submitted,

AMERICAN PUBLIC POWER ASSOCIATION

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[11,903]

[Caption Omitted]

RESPONSE OF PAN AMERICAN PETROLEUM CORPORATION TO MOTION FOR PROMULGATION OF SETTLEMENT PROPOSAL

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December 11, 1970

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[11,906]

[Caption Omitted]

RESPONSE OF PAN AMERICAN PETROLEUM CORPORATION TO MOTION FOR PROMULGATION OF SETTLEMENT PROPOSAL

Pursuant to provisions of the Administrative Procedure Act applicable to adjudication of rates, 5 U.S.C. §§ 553(c), 554, 556 and 557, Section 1.9 of the Commission Rules, 18 CFR § 1.9, and Notice of Motion for Promulgation of Settlement Proposal, issued by the Commission on November 9, 1970, Pan American Petroleum Corporation (Pan American) in response to the Motion for Promulgation of Settlement Proposal filed by the United Distribution Companies (U.D.C.) on November 6, 1970, respectfully shows that it does not join in or support such Settlement Proposal, and that the public interest requires that conditions be attached to Commission approval of the Settlement Proposal.

[11,907]

I

Introductory Statement

Pan American, in the past five years, has been an industry leader as to jurisdictional commitments of new gas reserves in the Southern Louisiana Area even under adverse economic conditions then prevailing because of low gas rates. However, economic benefits and gas incentives to Pan American under the Settlement Proposal are lower than to almost any other producer in the Southern Louisiana Area. As to 1965-1970 rate levels

and refunds, Pan American is placed at a substantial disvantage as to the sales of gas expressly included within the terms of the Settlement Proposal. More importantly, a portion of Pan American's exposure to potential refunds and rate reductions in the Southern Louisiana Area is not expressly included in the Settlement Proposal. A settlement proposal that does not fully include one of the largest contributors of gas reserves in the incentives purportedly flowing from such settlement proposal is clearly not in the public interest.

The four principal defects in the Settlement Proposal that operate to deprive Pan American of incentive to adequately increase commitments of new gas reserves are:

[11,908]

(1) the Settlement Proposal does not state that the principles of settlement of Dockets No. AR61-2 and AR-69-1 will apply to *Bastian Bay Field*, Docket No. CI66-910, if such case is ultimately decided by applying cents per Mcf rates to gas delivered and to be delivered;

(2) because of emphasis on forgiveness of Docket No. AR61-2 refund obligations, adequate importance is not attached to future revenue levels from both flowing gas and new gas, and future revenue levels allowed under Sections 3.1 and 3.3 of the Settlement Proposal therefore will be inadequate;

(3) under Section 3.3.2 of the Settlement Proposal price increases allowed each producer are not related to that producer's future reserve commitment level; and

(4) a substantial part of Pan American's refund obligations in Southern Louisiana are excluded from the reserve commitment alternative provided in Section 8.2 of the Settlement Proposal.

If the Commission approves settlement of Southern Louisiana rate issues, conditions correcting defects in the Settlement Proposal should be attached to Commission approval of

[11,909]

settlement of such issues.

II

Failure of the Settlement Proposal to provide incentive for adequate gas supplies also results in undue discrimination as between producers.

Settlement of these rate cases could have been a means of stipulating rate and revenue levels that would permit the entire natural gas producing industry to increase gas exploration and development expenditures to levels sufficient to supply gas needed by anticipated growth in gas consumption. However, preoccupation with settlement of contested issues in Docket No. AR61-2 was allowed to obstruct and finally defeat efforts to formulate a settlement that gives every natural gas producer an incentive to adequately increase its gas exploratory effort.

Any area rate settlement that is in the public interest must maximize the consumer benefit therefrom by prescribing gas revenue incentives that obtain the maximum gas supply response from the maximum number of individual gas producers.[1] The Settlement

[1] Reference is made to the three categories of required findings described by the Court of Appeals in *Southern Louisiana Area Rate Cases, Austral Oil Co., et al* v. *FPC*, 428 F.2d 407, 411 (5th Cir. 1970).

Proposal does not adequately satisfy criteria as to either size of incentive or distribution of incentive. It does not propose an incentive for an adequate gas exploratory response by the whole producing industry. Such incentive as is proposed is not distributed among the producer parties so as to cause the maximum gas supply response. In addition, five Southern Louisiana producers are excluded from full application of such incentive.[2])

A. Deficiencies in magnitude of incentive and distribution of incentive and the unduly discriminatory provision for relief as between producers are all interrelated in the Settlement Proposal.

In the Settlement Proposal, deficiencies in the magnitude and distribution of the incentive are interrelated. Because of general rate settlements and exercise of restraint in filing rate increases, many producers were collecting low rates on October 1, 1968, and do not have large refund obligations in Docket No. AR61-2. Undue emphasis on forgiveness of Docket No. AR61-2 refund obligations at the expense of future price and revenue levels does not make the best use of available methods of increasing the gas exploratory incentive of the whole industry.

By placing insufficient reliance on future gas revenue levels as an incentive, the Settlement Proposal de-emphasizes incentives that have broad impact on the whole producing industry. Incentives in the form of increased revenue levels for future gas deliveries operate to maxi-

[2] See pages 12 and 13, *infra*.

mize the number of producers that can and will respond to supply deficiencies.

Properly administered incentives provide for equality of incentive as between individual producers. Interrelated to failure to provide an adequate number of producers with incentives to make necessary increases in gas exploratory effort is the discriminatory and inequitable treatment as between producers provided in the Settlement Proposal. The deficiencies we cite as being contrary to provision for adequate gas inventory levels also result in rate treatment that is unduly discriminatory and inequitable as between producers. The rate and refund provisions of the Settlement Proposal provide lesser incentive to the producers whose September 30, 1968, effective filed rates reflect efforts to comply with Commission policies and rate guidelines. The same rate and refund provisions of the Settlement Proposal also discriminate against the same producers.

[11,912]

One example of the interrelation between absence of adequate incentive and undue discrimination is the price increase provisions of Section 3.3.2 of the Settlement Proposal. As is demonstrated in the Answer of Texaco Inc. to Motion for Promulgation of Settlement Proposal, ceiling price increases based on the level of new reserve commitments constitute a greater and more effective incentive where the price increase allowed a particular producer is directly related to the level of new reserve commitments made by that particular producer. However, Section 3.3.2 of the Settlement Proposal provides that producers obtain increased ceiling rates regardless of whether any new gas reserve commitments have been made by such producer or whether such producer still owes reserves under Section 8.2.2 of the Settlement Proposal.

Under Section 3.3.2 of the Settlement Proposal, producers such as Pan American with reduced rates on September 30, 1968, and consequently low Docket No. AR61-2 refund obligations, do not obtain increased ceiling prices until they have made enough reserve commitments to earn the increase in price for themselves and for producers whose reserve commitments are devoted exclusively to

liquidation of high Docket No. AR61-2 refund obligations. Pan American and similarly situated producers that maintained lower rates on September 30, 1968, and made refunds in the past are required to assume future burdens of others that are allowed to retain high September 30, 1968, rates and avoid refunds. In addition to being locked in to revenue disadvantages during periods prior to the effective date of the Settlement Proposal, Pan American would be prohibited from earning prompt increases in future rates by maintaining a high level of new reserve commitments. Thus, the features of Section 3.3.2 of the Settlement Proposal about which Texaco Inc. complains as not providing an adequate incentive also would operate in conjunction with Section 8.2 to promote undue discrimination.

B. Terms of the Settlement Proposal prescribing refund forgiveness and liquidation of refund liability are unduly discriminatory.

The foregoing discriminatory treatment is augmented by the Settlement Proposal provision governing refund forgiveness in Docket No. AR61-2 for the period October 1, 1968, through December 31, 1970. Instead of requiring refunds above a specified rate or revenue level, Section 8.1(b) of the Settlement Proposal requires

refund of a percentage of the amounts collected above Opinion No. 546 rates during the period October 1, 1968, through December 31, 1970. Benefits under Section 8.1(b) are directly related to the amount by which rates in effect on September 30, 1968, exceed Opinion No. 546 ceiling rates. The larger the rate difference, the larger the benefit under Section 8.1(b) and the higher the revenue level allowed under the Settlement Proposal.

Producers with high Docket No. AR61-2 refund obligations are affected less by the moratorium prescribed in Opinion No. 546 than producers such as Pan American that had reduced rates in effect on September 30, 1968. The refund provisions of the Settlement Proposal applicable to gas deliveries after September 30, 1968, impose unduly discriminatory and unequal operation of the Opinion No. 546 moratorium because benefits are directly related to the amount by which rates collected on September 30, 1968, exceed Opinion No. 546 rates.

The same type of undue discrimination as between producers flows from operation of pipeline tracking provisions in Section 4.1 of the Settlement Proposal and the Order Establishing Procedures With Respect to Increased Rate Filings in Southern

Louisiana issued October 27, 1970, in Docket No. AR69-1. Producer detriment is directly related to rate levels in effect on September 30, 1968. It has not been shown that imposition of such burdens is either necessary or proper.[3]

[3] See request for relief made by Pan American as to Southern Louisiana rate increases filed on November 20, 1970.

Under Sections 8.1(c) and (d) of the Settlement Proposal discriminatory treatment is carried forward to the period after December 31, 1970. Producers with rates on September 30, 1968, below the settlement rates who file rate increases before the effective date of Commission approval of the Settlement Proposal, would have to make cash refunds under Section 8.1(c) to the extent that such rate increases exceed the Settlement rates. However, producers that during the period October 1, 1968, through October 1, 1970, were collecting rates well above the settlement rates are allowed by Section 8.1(d) to elect under Section 8.2 of the Settlement Proposal to liquidate refund liability by commiting gas to jurisdictional sales.

C. Failure of the Settlement Proposal to include full Southern Louisiana coverage as to Pan American is unduly discriminatory.

Under Section 8 of the Settlement Proposal, Pan American would be a victim of still further undue discrimination. Pan American objects to terms of the Settlement Proposal that have the effect of picking and choosing as between producers so that all the Southern Louisiana refund liability and rates of only some producers are expressly covered by the Settlement Proposal. In spite of objections by Pan American, refunds made or to be made under company-wide rate settlements that have not as yet been paid over to consumers are excluded from the operation of Section 8.2 of the Settlement Proposal. Where refunds have not been paid to the pipeline purchaser or paid over to ultimate consumers, no basis exists for excluding such amounts from Section 8.2 of the Settlement Proposal. These amounts represent refunds that would

not be made if Pan American had postponed settlement of its Southern Louisiana rates.

Basic equity and justice indicate that the discriminatory effect of the Settlement Proposal on Pan American should be mitigated by allowing Pan American the benefits of Section 8.2 as to refund amounts applicable to past rate settlements that have not been paid to pipelines or to ultimate consumers. Parties to the Southern Louisiana area rate

[11,917]

proceedings should not be allowed, over Pan American's objections, to negotiate the exclusion of such refund liability from application of Section 8.2 of the Settlement Proposal. Purported distinctions between unliquidated refund obligations under Commission Opinion No. 546 and unliquidated refund obligations under Commission orders approving rate settlements are distinctions without differences as to impact upon producers and consumers. The effect of the exclusion of such amounts from operation of Section 8.2 of the Settlement Proposal is to impose a detriment upon producers such as Pan American solely because they did not wait until now to agree to settlement of Southern Louisiana rates.

Discriminatory, preferential, and inequitable treatment from picking and choosing as to which producers are granted complete Southern Louisiana coverage and which are not is particularly arbitrary as to Pan American because of Section 2.7 of the Settlement Proposal. The Commission stated in Opinion No. 565-A issued September 29, 1970, in the *Rayne Field* case that fair and equal treatment should be allowed to all producers. Such allowance of fair and equal treatment requires that if *Bastian Bay Field*, Docket No. CI66-910, is ultimately resolved by determination of cents per Mcf rates for gas delivered,

the principles of the Settlement Proposal should apply. Authority to overreach Pan American and others by providing full settlement coverage for all but Pan American and four other producers in the Southern Louisiana Area does not flow from Commission acquiescence in use of group negotiating procedures.

Nondiscriminatory inclusion of all jurisdictional Southern Louisiana gas is assumed by the argument on page 2 of the Answer filed by Shell Oil Co., *et al.*, in support of promulgation of the Settlement Proposal. Shell, *et al.*, correctly argue that other matters which are the subject of proceedings other than Docket Nos. AR61-2 and AR69-1, but which may be affected by final decision in those area rate proceedings should as to some or all issues be covered by the Settlement Proposal so as "to completely resolve the Southern Louisiana area rate issues." Failure of the Settlement Proposal to include the provisions respecting *Bastian Bay Field*, Docket No. CI66-910, hereinafter proposed by Pan American is unjust and unduly discriminatory and contrary to arguments of Shell Oil Co., *et al.*, in support of promulgation of the Settlement Proposal.

The Answer by Pipeline Purchaser Group To Motion

For Promulgation of Settlement Proposal argues that, during settlement negotiations, "no party's views were ignored or dealt with in less than a sympathetic manner." This is not accurate. The provisions of Section 2.7 of the Settlement Proposal, excluding the *Bastain Bay Field* and *Rayne Field* cases, were inserted at the insistence of

the Pipeline Purchaser Group. All suggested alternatives, including compromise language suggested by The Associated Gas Distributors, were rejected by the Pipeline Purchaser Group.

Proponents of the ceiling price and refund provisions of the Settlement Proposal urge adoption thereof as being necessary to provide adequate gas supply incentive. Section 2.7 of the Settlement Proposal is at least as much a negative incentive as failure to provide for rate and refund relief to other producers would have been a negative incentive to such other producers. The proponents of Section 2.7 of the Settlement Proposal do not explain their insistence on such negative incentive. Unexplained and unsupported discrimination is *per se* an undue discrimination and thus is unlawful.

For the foregoing reasons, Pan American cannot support the Settlement Proposal filed on November 6, 1970, as either furnishing an incentive to adequately increase natural gas supplies or

[11,920]

as being in the public interest. Failure to include all jurisdictional Southern Louisiana gas results in failure to include all Southern Louisiana producers in the gas supply incentive sought. Lower overall incentive is a direct result of the unequal and preferential distribution of incentive. Commission modification of terms of the Settlement Proposal to reduce discriminatory effect would increase the gas supply incentive in direct proportion to elimination of discriminatory effect.[4]

[4] The Settlement Proposal may also be unduly prejudicial to purchasers of gas for consumption in Louisiana. Persons that may be affected are better qualified than Pan American to analyze and present to the Commission contentions respecting such issue.

III

As conditions attached to granting its approval, the Commission should modify terms of the Settlement Proposal to provide incentive for an adequate gas supply.

Forgiveness of refunds and increased ceiling prices are the incentives for gas exploration provided in the Settlement Proposal. We have shown such incentives will be effective in direct proportion to the number of producers to which they apply.[5]

[11,921]

The public interest does not permit excluding some of the more substantial Southern Louisiana producers from *full*, *immediate*, and *nondiscriminatory* application of incentives provided.

A. The Settlement Proposal should be modified to apply to all Southern Louisiana gas including gas delivered under *Bastian Bay Field*, Docket No. CI66-910.

Equal and nondiscriminatory application of the Settlement Proposal to all producers requires that the provisions of Section 2.7 be deleted and the following substituted:

> "If the *Rayne Field*, Docket Nos. G-12446, *et al.*, and *Bastian Bay Field*, Docket No. CI66-910, proceedings are ultimately decided by applying cents per Mcf rates to gas delivered to the interstate pipelines involved, the principles of this Settlement Proposal will apply in those cases prior to October 1, 1968, as well as after that date."

[5] Reference is made to the three categories of required findings described by the Court of Appeals in *Southern Louisiana Area Rate Cases, Austral Oil Co., et al.* v. *FPC*, 428 F.2d 407, 441 (5th Cir. 1970).

It is essential that the five producers involved in those proceedings be allowed equal protection with all other producers under the Settlement Proposal. "The one objective that must always be kept in sight is the need to provide fair and equal treatment for all of those regulated." [6]

[11,922]

Pan American should not be restricted to a uniquely lower gas supply incentive. Commission approval of the Settlement Proposal should be conditioned upon the application thereof to all Southern Louisiana producers as indicated above.

B. The Settlement Proposal should be modified to provide full Southern Louisiana coverage to *all* producers.

Use of a refund rate level instead of a refund percentage in Section 8.1 (b) of the Settlement Proposal would be more effective and equitable. However, the Commission may decide that it is impractical to require such a significant modification in the basis of settlement.[7] In either event, the Commission should modify Section 8.2 of the Settlement Proposal to include refund amounts that have not as yet been paid out by producers under past rate settlements such as Pan American's settlement in Docket No. G-9279, *et al.* The Commission should attach as a condition to its approval of the settlement a requirement that Section 8.2 of the Settlement Proposal be modified to include application to the above amounts.

[6] Page 11, Opinion No. 565-A, issued September 29, 1970.

[7] In addition, modification of Section 3.3.2 as proposed by Texaco and Pan American would tend to mitigate some of the discriminatory effects of Section 8.

C. New gas prices provided in Section 3.1(b) of the Settlement Proposal should be increased to provide adequate gas supply levels.

Proponents of the Settlement Proposal are in agreement that time is of essence as to implementation of incentives to increase the gas supply available to consumers. Adequate provision for the necessary increase in gas inventory requires an increase in revenue levels for both new and flowing gas. Unless the Commission is able to promptly approve the Settlement Proposal with conditions attached as hereinafter proposed, it should provide an immediate partial incentive by promptly issuing its order fixing new gas prices in Docket No. R-389A.

In any event, the Commission should consider the record made in Docket No. R-389A to determine the increased ceiling price that should be substituted in Section 3.1(b) of the Settlement Proposal to provide an incentive for an adequately increased gas supply and thus provide a price incentive that is in the public interest. In Docket No. R-389A, the Comments of Pan American Petroleum Corporation, the Answering Comments of Pan American Petroleum Corporation, and the Supplemental Comments of Texaco Inc. use the most recent data to demonstrate

that the ceiling price now provided in Section 3.1(b) of the Settlement Proposal is inadequate.

A new gas revenue level above the ceiling price now provided in Section 3.1(b) of the Settlement Proposal is

required if producer revenue from new gas sales is to contribute to providing for anticipated growth in gas consumption. As a condition to approval of the Settlement Proposal, the Commission should revise upward the prices prescribed in Section 3.1(b).

D. The flowing gas revenue levels allowed under Section 3.1(a) of the Settlement Proposal must be modified to allow required magnitude and timing of the producer gas supply effort.

Even if Section 3.1(b) of the Settlement Proposal is modified to provide the new gas revenue level shown to be necessary in comments and data filed by Pan American and Texaco in Docket No. R-389A, the gas supply response will be too small and too late unless timely provision is also made for adequate revenue levels from deliveries of flowing gas. An essential ingredient of prompt and adequate producer response to the gas supply shortage is prompt availability of adequate funds to commit to gas exploration and development. Future growth in revenue from future increased

deliveries of gas under new gas sales cannot support the immediate increase in gas exploration and development effort that is required.

It is anticipated that the record in Docket No. AR69-1 will show that producer revenue levels under the ceiling prices now proposed in Section 3.1(a) of the Settlement Proposal would be inadequate and should be substantially increased. The cash flow from current gas deliveries that is necessary for an adequate and prompt response to growth in gas consumption requires such upward adjustments. The Commission should determine the

increased revenue levels required to make it economically feasible to supply the anticipated growth in gas consumption and include the necessary upward modifications of the prices in Section 3.1(a) of the Settlement Proposal as a condition to its approval.

E. Section 3.3.2 of the Settlement Proposal should be modified to adequately link future price escalations directly to exploratory effort.

For the reasons stated in the Answer of Texaco Inc. to Motion for Promulgation of Settlement Proposal, Section 3.3.2 of the Settlement Proposal should be modified as proposed in the Appendix to Texaco's Answer. The Comimssion should not approve the lesser

incentive now provided in Section 3.3.2 of the Settlement Proposal when a greater incentive is available at the same or less cost to ultimate consumers. Commission approval of the Settlement Proposal should be conditioned upon substituting Section 3.3.2 as proposed by Texaco for Section 3.3.2 of the Settlement Proposal.

F. The Commission's Order should list the Disputed Zone sales to which settlement provisions applicable to Disputed Zone gas apply.

In Section 9.1 of the Settlement Proposal, parties have attempted to describe the sales of gas to which Disputed Zone rate and refund provisions of the Settlement Proposal apply. As is nearly always the case with attempts to describe a specific category of gas sales, the descriptive language is subject to differing interpretations. Disputes as to whether particular sales are or are not intended to be covered could be time-consuming and ex-

pensive. Pan American suggests that there be appended to the Commission Order a list of the dockets and rate schedules which the descriptive language in Section 9.1 is intended to cover. Attached as Appendix A hereto is a list of the dockets and rate schedules of Pan American that are intended to be covered by provisions of the Settlement Proposal applicable to sales from the Disputed Zone.

[11,927]

G. Alternatives available to the Commission are not limited to unconditional approval of the Settlement Proposal or complete rejection thereof.

Authority of the parties to effectuate settlement of these proceedings is not as unrestricted as the authority of plaintiffs and defendants to settle ordinary private lawsuits. Unlike ordinary private lawsuits in which parties have broad authority and discretion to settle issues and agree as to final judgment, these proceedings must protect the public interest in addition to rights of the parties that participated in the hearings. Here, the Commission is more than an umpire in a private dispute. It cannot approve settlement of disputed issues unless it finds that the terms of settlement satisfy public interest objectives.

Unlike courts before which private lawsuits are brought, the Commission is not expected to abstain from conditioning its approval of settlement proposals as may be required in the public interest. In these proceedings the Commission has an affirmative duty to review the Settlement Proposal filed November 6, 1970, and, as a condition to approval thereof, to make whatever changes are required by the public interest. The Commission cannot delegate

to any group of parties this ultimate responsibility to see that rate cases are decided in the public interest.[8]

Proponents of the Settlement Proposal state that the principal justification therefor is provision of incentives to adequately increase gas supplies so that the anticipated growth in gas consumption will be feasible. The purpose of the modifications of the Settlement Proposal suggested by Pan American is to correct deficiencies that constitute unnecessary reduction of incentives to increase the Southern Louisiana gas supply.

[11,929]

For the reasons stated in this Response, conditions to approval of the Settlement Proposal must eliminate the unduly discriminatory features set forth *supra*, and modify prices and other provisions to provide adequate incentives and revenues, equitably distributed among all producers in the Southern Louisiana Area.

Respectfully submitted,

PAN AMERICAN PETROLEUM CORPORATION

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By: /s/ William H. Emerson
WILLIAM H. EMERSON

December 11, 1970

[8] Even unanimous support of settlement by named parties to Dockets No. AR61-2 and AR69-1 does not compel Commission approval thereof. Similarly, opposition by some parties does not require disapproval. The Settlement Proposal is just that, a proposal that the Commission can approve, reject, or approve with conditions attached.

APPENDIX A

Disputed Zone Dockets and Rate Schedules of Pan American Petroleum Corporation

Docket No.	Rate Schedule No.
G-15438	258
CI61-355	288
G-17417	312
CI64-669	388
CI66-769	431
CI67-1654	483
CI68-573	502
CI70-100	536

[11,936]

[Caption Omitted]

COMMENTS OF INDEPENDENT NATURAL GAS ASSOCIATION OF AMERICA IN SUPPORT OF PROMULGATION OF SETTLEMENT PROPOSAL

Pursuant to the Commission's Notice of Motion for Promulgation of Settlement Proposal issued herein on November 9, 1970, the Independent Natural Gas Association of America (INGAA) hereby submits its comments in support of the issuance by the Commission of an order promulgating and approving the settlement proposal submitted herein.

INGAA, an intervenor herein, is a non-profit trade association, whose membership includes virtually all of the major interstate gas transmission companies subject to the jurisdiction of the Commission. It also has within its membership producers of natural gas and distribution companies. All of the 11 major interstate transmission companies comprising the Pipeline Purchaser Group purchasing natural gas from the Southern Louisiana Area are members of INGAA. While the settlement proposal is of direct interest to these companies, it is also of great interest to the other members of INGAA who do not purchase gas in South Louisiana, because of the great national importance attached to an early disposition of these controverted

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matters. South Louisiana, offshore and onshore, is the largest single source of gas supply in the Nation today.

The rates fixed here, therefore, will have widespread impact on all areas of the country and on the entire industry.

INGAA supports the settlement proposal set forth in Appendix A to the Motion of the United Distribution Companies (UDC) as representing a fair resolution of the vital matters confronting the gas industry with respect to the subject producing area.

INGAA believes further that approval of the settlement proposal will be a major step forward in creating the necessary incentives for the increased exploration for and development of natural gas supplies for the interstate market.

INGAA is aware that the settlement agreement does not have the approval of all of the parties to the proceedings in Dockets AR61-2 and AR69-1 and that further limited evidentiary hearings may be necessary. Nevertheless, by far the majority of the interested parties, including all of the Pipeline Purchasers and the great preponderance of consumer and producer interests, have indicated their support for the settlement agreement.[1] The Staff of the Commission also has responded to the UDC Motion

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urging the Commission to grant said Motion and to issue an order in these proceedings containing the

[1] See: Motion of United Distribution Companies for Promulgation of Settlement Proposal filed November 6, 1970; Answer by Pipeline Purchaser Group to Motion for Promulgation of Settlement Proposal; Responses to motion by numerous major producers both jointly and severally; Answer of Associated Gas Distributors filed on November 9, 1970, and the separate Answer by Long Island Lighting Company filed on or about November 12, 1970.

terms and conditions set forth in the settlement proposal. Such widespread support cannot and should not be lightly disregarded. The critical gas supply situation confronting the Nation today is evidence enough of the need for the Commission, the industry and all parties to bend every effort to seek remedial action without delay. As we have previously stated, INGAA believes approval of the settlement proposal herein will be a major step forward towards easing the gas supply situation in this country.

WHEREFORE, INGAA prays that the Commission approve the settlement proposal under the terms and conditions set forth in Appendix A to the Motion of United Distribution Companies filed herein on November 6, 1970. If further evidence is needed beyond that already contained in the record in these proceedings, we urge that the necessary procedural steps be established at the earliest possible moment.

Respectfully submitted,

INDEPENDENT NATURAL GAS ASSOCIATION OF AMERICA
1660 L Street, N. W.
Washington, D. C. 20036

By /s/ Jerome J. McGrath
JEROME J. MCGRATH
Vice President and General Counsel

Washington, D. C.
December 11, 1970

[11,941]

[Caption Omitted]

REPLY OF ASSOCIATED GAS DISTRIBUTORS TO ANSWER OF TEXACO, INC.

Pursuant to Section 1.18 of the Commission's Rules, Associated Gas Distributors (AGD)[1] hereby respond to the Answer of Texaco, Inc. to Motion for Promulgation of Settlement Proposal.

Texaco has recommended that the settlement proposal be approved with the modification that an individual company approach be followed in regard to the contingent escalations in Section 3.3.2 of the proposal. In its response of November 9, 1970, AGD has supported the settlement proposal submitted here by UDC. For the reasons stated in that response, AGD maintains the view that the settlement proposal as filed represents a reasonable basis for disposing of the issues in this docket. If, however, the Commission should adopt the

[11,942]

modification recommended by Texaco, AGD urges that Texaco's proposal be amended to include terms whereby a contingent escalation would be rescinded if the individual company reserve commitments on which it is based were later reduced below that company's triggering level. This amendment could be accomplished by adding Section 3.3.2(e) of the filed settlement proposal as Paragraph (f) of the provision recommended by Texaco.

[1] The AGD Companies joining in this reply are listed in Appendix A.

[11,942]

Reply of Associated Gas Distributors

This comment should not be taken as any departure from the position stated by AGD in its November 9, 1970 response herein.

Respectfully submitted,

ASSOCIATED GAS DISTRIBUTORS

By /s/ John E. Holtzinger, Jr.
JOHN E. HOLTZINGER, JR.
Counsel

MORGAN, LEWIS & BOCKIUS
1140 Connecticut Avenue, N.W.
Washington, D.C. 20036
Of Counsel

December 11, 1970

APPENDIX A

ASSOCIATED GAS DISTRIBUTORS

Alabama Gas Corporation

Atlanta Gas Light Company

The Berkshire Gas Company; Boston Gas Company; Bristol and Warren Gas Company; Brockton Taunton Gas Company; Buzzards Bay Gas Company; Cambridge Gas Company; Central Massachusetts Gas Company; City of Westfield Gas and Electric Light Department; Concord Natural Gas Corporation; The Connecticut Gas Company; Connecticut Natural Gas Corporation; Fall River Gas Company; Fitchburg Gas and Electric Light Company; Gas Service Inc.; The Greenwich Gas Company; The Hartford Electric Light Company; Haverhill Gas Company; Lawrence Gas Company; Lowell Gas Company; Lynn Gas Company; Manchester Gas Company; Mystic Valley Gas Company; New Bedford Gas and Edison Light Company; The Newport Gas Light Company; Northampton Gas Light Company; North Attleboro Gas Company; North Shore Gas Company; Norwood Gas Company; The Pequot Gas Company; South County Gas Company; Southern Connecticut Gas Company; Springfield Gas Light Company; Tiverton Gas Company; Valley Gas Company; Wachusett Gas Company; and Worcester Gas Light Company (jointly)

The Brooklyn Union Gas Company

Central Hudson Gas and Electric Corporation

Delmarva Power & Light Company

Elizabethtown Gas Company

Long Island Lighting Company
New Jersey Natural Gas Company
New York State Electric & Gas Corporation
Philadelphia Gas Works, Division of UGI Corporation
Piedmont Natural Gas Company, Inc.
Public Service Company of North Carolina
Public Service Electric & Gas Company
Rochester Gas and Electric Corporation
South Jersey Gas Company
UGI Corporation
Washington Gas Light Company

[11,946]

[Caption Omitted]

ANSWER IN OPPOSITION OF THE AMERICAN PUBLIC GAS ASSOCIATION AND CONSUMER FEDERATION OF AMERICA

On November 9, 1970, the Commission issued notice that on November 6, 1970, the United Distribution Companies filed a Motion for Promulgation of Settlement Proposal in this proceeding. The American Public Gas Association (APGA)[1] and Consumer Federation of America (CFA)[2] hereby file their joint and individual Answer in Opposition to the subject Settlement Proposal, on the grounds set forth below that it is unlawful and contrary to the public interest:

I

The Settlement Proposal is unlawful because it attempts to retroactively set producer rates for the Southern Louisiana area.

On the basis of an extensive record compiled in the *Southern Louisiana Area Rate Proceeding* (Docket No. AR61-2), the Commission issued Opinion No. 546 on September 25, 1968, setting just and reasonable area rates for gas produced in that area. 40 F.P.C. 530. After consideration of applications for rehearing, the Commis-

[1] The City of Norwich, Connecticut Department of Public Utilities, a member of the AGD Group does not agree with the previously expressed views of that Group on the Settlement and hereby joins this Opposition.

[2] The Consumer Federation of America is a party to the proceedings in Docket R-389A and joins in this Opposition because it appears that the proposed Settlement may be considered as a substitute for the R-389A proceedings.

sion on March 20, 1969, issued its Opinion No. 546-A and accompanying order. 41 F.P.C. 301. The Commission re-affirmed that the rates established in Opinion No. 546 were just and reasonable. The United States Court of Appeals for the Fifth Circuit on March 19, 1970,

[11,947]

sustained in full the orders of the Commission in Opinion Nos. 546 and 546-A. *Austral Oil Co.* v. *FPC*, 428 F.2d 407, 415 (1970). Petitions for rehearing were denied on June 16, 1970. Petitions for a writ of certiorari were denied by the Supreme Court on December 7, 1970. The Commission's orders in the *Southern Louisiana Area Rate Proceeding* are now final and non-appealable. It is well settled law that the Commission's statutory ratemaking authority is prospective only and that retroactive ratemaking is unlawful under the terms of the Natural Gas Act. *E.g.*, *FPC* v. *Hope Natural Gas Co.*, 320 U.S. 591 (1944); *Montana-Dakota Util. Co.* v. *Northwestern Public Service Co.*, 341 U.S. 246 (1951); *State Corp. Comm'n of Kansas* v. *FPC*, 215 F.2d 176 (8th Cir. 1954). The subject Settlement Proposal purports to affect these just and reasonable rates for gas produced in the Southern Louisiana area and is therefore clearly unlawful under this accepted rule of law. The Commission may, as it has in Docket No. AR69-1, commence new proceedings to consider whether changes in circumstances since issuance of the orders in this case in the Southern Louisiana area warrant prospective revision of the prescribed rates.

The Fifth Circuit in its *Austral* decision *supra*, indicated that the Commission under Section 16 of the Act could change the rates affirmed by the Court. 428 F.2d at 444-45. The petitions for rehearing filed by the producer and pipeline petitioners and the Commission's own

statement in response to inquiries directed by the Court all agreed that under the Act the Commission's rate-making authority was prospective only. Finally, on June 16, 1970, the petitions for rehearing were denied in a per curiam opinion. The Fifth Circuit stated as follows (Slip. Op. at 2):

> . . . We wish to make crystal clear the authority of the Commission in this case to reopen any part of its order that circumstances require be reopened. Under section 19(b) of the Natural Gas Act, this Court has the broad remedial powers that inhere in a court of equity, and pursuant to our equitable powers we make it part of the remedy in this case that the authority of the Commission to reopen any part of its orders, including those affecting revenues from gas already delivered, is left intact. The Commission can make retrospective as well as prospective adjustments in this case if it finds that it is in the public interest to do so.
>
> At the same time, we emphasize that our judgment is an affirmance and not a remand. The appropriate place for originally considering what parts of the orders must be reopened in light of new evidence is before the Commission. It may be that the Commission will decide that the refunds it has ordered are just and reasonable or at least that their significance to the public interest is outweighed by the confusion and delay that would result from their reopening. In this event, the Commission will allow its refund orders to stand as they are. Or it may be that the refunds are too burdensome in light of new evidence to be in the public interest. In that case, it is our judgment that the Commission shall have the power and the duty to remedy the situation by changing its orders.

> In all other respects, the original opinion of this Court is the final disposition of this appeal.

Assuming for the purposes of this Answer that the Commission continues to recognize the established principle that it has no retroactive ratemaking powers under the terms of the Natural Gas Act, it remains only to be shown that the ruling of the Fifth Circuit that it has equitable

powers, notwithstanding affirmance of the Commission's orders in AR61-2, to revise the rates and provisions of the rate orders retroactively, and that it may confer, and has conferred, its equitable power on the Commission so that the "Commission can make retrospective as well as prospective adjustments in this case if it finds that it is in the public interest to do so" (Slip Op. at 2) is clearly erroneous.

Whatever the Fifth Circuit's undefined equitable powers may be, they cannot be used to confer upon the Commission broader powers than Congress conferred, *Public Service Comm'n of New York* v. *FPC*, 257 F.2d 717, 722 (3rd Cir., 1958):

> The jurisdiction of the FPC is entirely statutory. It acts as an arm of Congress and only as Congress has directed it.

The Supreme Court has ruled that powers withheld from the Commission by Congress cannot be conferred by the courts in the exercise of their equitable powers. *Montana-Dakota Utilities Co.* v. *Northwestern Public Service Co.*, 341 U.S. 246, 254 (1951). And the Eighth Circuit has reached the same conclusion, upon consideration of Section 19(b), in *State Corporation Commission of Kansas, supra*, at 184:

> It is pointed out that in rate regulation such as is here involved the Commission's legislative fixing of rates must necessarily relate to the future and the Commission lacks the power to grant reparation where a rate has proved on application to be confiscatory. The court is also limited strictly to the exercise of judicial power and has no power to fix rates or to accord reparations on account of insufficiency of rates in the past. . . There is no place in the proceeding for either the Commission or the court to accord reparation.
>
> * * * *
>
> We conclude. . . That such recovery of reparation is not sanctioned by Section 19(b) and is contrary to well settled law.
>
> [11,952]

See also: FTC v. Raladam Co., 283 U.S. 643, 649 (1931): "If broader powers be desirable, they must be conferred by Congress. They cannot be merely assumed by administrative officers; *nor can they be created by the courts in the proper exercise of their judicial functions.*" (Emphasis supplied.)

Finally, the ruling of the Fifth Circuit goes beyond its powers as conferred by Section 19(b): the court may require the Commission to take additional evidence, if application therefor is made by a party to the review proceedings and may affirm, modify, or set aside the orders on review in whole or in part. The Fifth Circuit denied the producer-petitioners' motions for leave to adduce additional evidence and affirmed the orders. The court emphasized that its "judgment is an affirmance and not a remand." (Slip Op. at 2.) In these circumstances, there is no occasion and no basis for the exercise of the court's equitable powers. Indeed, there are no funds for disposition within the court's jurisdiction to which its equitable

[11,952]

powers might apply. *FPC* v. *Interstate Gas Co.*, 336 U.S. 577, 582-83 (1949).

In summary, it is abundantly clear that the Commission does not have statutory authority to approve the subject Settlement Proposal which attempts to retroactively set area rates for the Southern Louisiana area and that the attempt by the Fifth Circuit to bestow such authority on the Commission was ill-conceived and illegal. APGA and CFA submit that the only proper procedure for considering changed circumstances, if any, in the Southern Louisiana area is the AR69-1 proceeding now underway and that any modification of the rates set in the judicially-affirmed AR61-2 proceeding must be prospective only.

[11,953]

II

The Settlement Proposal Is Unlawful Because It Runs Contra the Record in AR61-2 and It Improperly Anticipates the Record in AR69-1.

As a result of the record compiled in AR61-2, the Commission established three vintages of natural gas and established the following as the just and reasonable ceiling rate for each vintage (40 F.P.C. at 554):

Vintage	Rate	
	On Shore	Off Shore
	(cents per Mcf)	
All casinghead or oil well gas (gas produced in association with oil) and pre-1961 gas-well gas (including residue gas derived from it)	18½	17
Gas-well gas sold under contracts dated January 1, 1961 through September 30, 1968	19½	18
Gas-well gas sold under contracts dated October 1, 1968 or later	20	18½

The Settlement Proposal would abandon these record-oriented, cost-based area rates and set substantially higher area rates retrospectively and prospectively for flowing and new gas.[2] As all recognize, the sole justification for the new increased rates is the asserted gas supply situation, which is the controverted subject of the ongoing AR69-1 proceeding. The Settlement Proposal would abort the high purposes of the AR69-1 proceeding, which was initiated to provide a meaningful,

[11,954]

in-depth review of all aspects of the gas supply issue, which has been such a constant, shadowy companion of industry efforts to escape Commission regulation since the unsuccessful attempts at legislative relief following the first *Phillips* decision in 1954. The AR69-1 proceeding was heralded as designed to provide the long overdue Commission spotlight on the amorphous questions of the cause of such asserted "shortages", particularly the impact of the Commission's previously established area rates derived from the "cost-anchor" which the courts have made clear is required by the Natural Gas Act.[3] The subject Settlement Proposal does not answer any of the overriding public interest questions now at issue in AR69-1 but only reflects the willingness of the industry to charge the nation's gas consumers greatly increased rates for its product on the pretense that such greatly increased rates are required to make that product avail-

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[2] For example, new gas prices would instantly jump 30% for onshore gas and 40.5% for offshore gas and taking into consideration the automatic and provisional escalations, 42.5% for onshore gas and 54% for offshore gas.

[3] Permian Basin Area Rate Cases, 390 U.S. 747 (1968); City of Detroit v. FPC, 230 F.2d 810 (D. C. Cir. 1955), *cert. denied*, 352 U.S. 829 (1956).

able. This is a patently unacceptable basis for grounding a Settlement Proposal.

It is instructive to recall the circumstances which caused the Commission to institute this proceeding. AR69-1 was triggered by a petition filed with the Commission by the New York Public Service Commission, which the Commission characterized as follows in its order instituting the AR69-1 proceeding:

> On January 8, 1969, the New York Public Service Commission filed a request that the Commission institute an investigation into the adequacy of gas reserves held or controlled by the major producers and pipelines, and the claims of a shortage of natural gas. In explaining its reasons why it believes an investigation is necessary, the New York Commission referred to a December 16, 1968, letter sent by the American Gas Association to the Commission which it interprets as asserting that

> distributors and pipelines are being refused service by many producers on the ground that the prices found in our area decisions to be just and reasonable are inadequate. The New York Commission gave three reasons why such a refusal to serve, if it exists, is sufficiently serious to warrant formal investigation:
>
> > First, such a shortage, if proven on an evidentiary record, would require a review to determine the reasons therefor and the appropriate regulatory response thereto.
> >
> > Second, to the extent that the actual or threatened withholding of gas was being used to coerce parties to FPC proceedings to modify their positions, it would be essential for the FPC to

> take corrective measures to protect the integrity of its processes.
>
> Third, any group effort to fix the price at which natural gas shall be sold in interstate commerce, and any group refusal to sell gas to particular customers, would constitute 'apparent violations of the Federal antitrust laws' which the Commission is obliged to call to the attention of the Attorney General under Section 20(a) of the Natural Gas Act.

AR69-1 has already produced a voluminous, though incomplete, record. The proposed settlement, however, makes no attempt to demonstrate what it shows. In lieu of analysis, argument, and supporting facts are offered bald assertions, unembarrassed by any citations to the record, that the evidence adduced thus far "conclusively demonstrates a material and growing gas shortage" and establishes "the absolute necessity for providing incentives for increased exploration and development in the Southern Louisiana area". These are undoubtedly the most expensive "*ipse dixits*" in history, forming, as they do, the sole predicate for the conversion of $376 million in potential consumer refunds to the producers and setting area rates at exorbitant levels unsuppotred by any record thereby producing several billions of dollars of revenues from *already committed reserves.* As we show in a subsequent portion of this Answer in Opposition,[4]

[11,956]

the Commission has an affirmative duty to come to grips with the jugular issues raised by the New York Commission and contested in AR69-1. *E.g., Scenic Hudson Preservation Conf.* v. *FPC*, 354 F.2d 608 (2nd Cir.

[4] Part IV, *infra.*

1965), *cert. deined*, 384 U.S. 941 (1966). It cannot approve the subject Settlement Proposal without making adequate findings on these disputed issues. *E.g.*, *Public Service Comm'n of N.Y.* v. *FPC*, No. 23446 (D.C. Cir., June 29, 1970). Such findings must await the compilation of a complete record, and thorough analysis thereof.

Though we submit it is premature to draw any conclusions from the incomplete record in AR69-1, we disagree with settlement proponents' assertions as to what the record in Phase I of this proceeding shows. On the limited record that has been developed thus far in this proceeding, we think it clear that:

(1) The producers have not demonstrated that the Commission's cost-based regulatory policy has deterred normal exploration activity, inasmuch as exploratory drilling has been steadily increasing.

(2) There is no need for additional incentives to make available substantial quantities of gas from the producers' proven and probable reserves; rather a reasonable inference is that the current withholding of gas by the producers is designed to elicit Commission approval of rates keyed to what a desperate, energy-dependent market will bear.

(3) The elements of the industry's R/P ratio and the cause and effect of its asserted decline in recent years are uncertain, except that it appears clear that the producers have revised prior reserve estimates downward and have reduced developmental drilling on "probable" reserves which can be converted to "proven" reserves (upon which the R/P is developed) with a minimum of time, expenditure and risk.

(4) Any supply/demand squeeze appears to be primarily the result of inadequate industry prediction of

demand levels, inasmuch as the same squeeze is facing the oil and coal industries, whose pricing is not subject to any kind of regulation.

[11,957]

(5) Even if the record demonstrated the need for some kind of additional incentive, the amount needed cannot be determined from the present incomplete record. Thus, there is no way for the Commission to meet the judicial requirement that cost-of-service be used at least as a point of departure for ratemaking and that any rate adjustment must be no more than is needed for the desired purpose.[5] It is clear that the settlement proposal rates are exorbitant in light of the extensive cost of service record developed in AR61-2. Whether subsequent developments provide any justification for some increases for new and old gas, respectively, over the rates approved by the Commission and the Fifth Circuit on the basis of the AR61-2 record cannot be determined until Phase II of this proceeding has been completed, although they appear patently excessive.[6]

It should be clear that the Commission cannot discharge its responsibilities under the Natural Gas Act without a critical review of the various facets of the gas supply issue underlying the proposed settlement. A rubber stamp wielded in response to unsupported industry arguments keyed to the fears of the consuming pub-

[5] City of Detroit v. FPC, 230 F.2d 810 (D. C. Cir.), *cert. denied*, 352 U.S. 829 (1956).

[6] For example, the weighted average current price obtained by producers from unregulated intrastate sales in the Southern Louisiana area under contracts dated 1966-1969 only ranged from 19.57 to 20.38 cents per Mcf. The incentive rate for "new" gas in the Settlement Proposal would be 26 cents.

lic is not the kind of regulation which the courts have made clear is required of the Commission in light of the Natural Gas Act's consumer-oriented objectives. We think it obvious that this weighty obligation cannot be met without carrying through AR69-1 to completion so that a full evidentiary record will have been developed and opportunity afforded all parties to brief and argue the cost of service and related questions not yet reached in this proceeding.

[11,958]

III

The Settlement Proposal Is Unlawful Because It Fails to Fulfill the Objective of the Fifth Circuit's Decision.

In addition to the patent illegality of the Settlement Proposal as retroactive ratemaking,[7] the selfsame Settlement Proposal violates the terms of the very saving language from which it claims legitimacy. The Fifth Circuit's pronouncement that the Commission was empowered to review the rates it had set for the Southern Louisiana Area was preceded by a lengthy discourse articulating the deficiencies of the Commission's findings in Opinion Nos. 546 and 546-A, specifically as related to the matter of supply and demand. 428 F.2d at 441-445. *A fortiori* the Commission cannot now approve a Settlement Proposal which arbitrarily increases producer rates above those levels set in Opinion Nos. 546 and 546-A on the unsupported premise that such increases may provide incentive for increased exploratory and developmental activity. The Settlement Proposal improperly presumes the resolution of a number of crucial issues, discussed below, which must in the public interest be settled by the Com-

[7] Part I, *supra*.

mission on the basis of record evidence. *See, e.g., Scenic Hudson Preservation Conf.* v. *FPC*, 354 F.2d 608 (2nd Cir. 1965), *cert. denied*, 384 U.S. 941 (1966).

(a) In the first place, the Settlement Proposal assumes there is a genuine gas supply shortage. But as we show above,[8] the record in AR69-1 gives no proof of the matter and indicates that the gas supply situation is the result of manipulation by the producers of their drilling activity.[9] The producers have continued unabated their relatively

[11,959]

expense exploratory activity but have slowed down their far less costly developmental activity which has the result of freezing the proven reserves figure despite the far more significant increases in probable reserves. In short, the producers have used their ability to control the availability of gas to coerce the natural gas industry to sanction the subject Settlement Proposal. This in no way relieves the Commission of its regulatory responsibility to make adequate findings on the issue of gas supply on the basis of record evidence, as required by the Natural Gas Act and Administrative Procedure Act and as stipulated by the Fifth Circuit. The only forum in which this procedure may properly be followed is Docket AR69-1 in which a record is being built on this and related issues. Settlement proposals do not relieve the Commission of its heavy responsibility to guard the public interest regardless of how many segments of the gas industry lend their support to a proposed price increase.

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[8] Part II, *supra*.

[9] This very issue is now under investigation by the Federal Trade Commission.

(b) The second assumption built into the Settlement Proposal is that increased producer prices are required to remedy the asserted gas supply situation. A basic flaw behind this assumption is the fact pointed out above that exploratory activity during recent years has not diminished. Thus, the increased prices would only unjustly reward the producers for failing to develop their probable reserves. The inescapable conclusion is that the answer to the gas supply situation is rate stability, not rate hikes. Once the industry is put on notice that the Commission will not bend to the producers' will, then there will be no further incentive to hold off the probable reserves to secure higher profits. Additionally, the thrust of the Settlement Proposal is backwards, not forwards, by rewarding through forgiveness of refunds those producers which in the past charged the most exorbitant rates, by sanctioning higher prices for flowing gas, and by allowing the 26¢ price for allegedly "new" gas for reserves committed after October, 1968 but prior to the effective date of this Settlement Proposal.

(c) And finally the Settlement Proposal incorrectly assumes that the proposed rate increases contained therein are needed, but are no more than are needed, to meet the just and reasonable standard of the Natural Gas Act, as required by the U.S. Court of Appeals for the District of Columbia in *City of Detroit* v. *FPC*, 230 F. 2d 810 (D.C. Cir., 1955) *cert. denied*, 352 U.S. 829 (1956). The Settlement Proposal provides no cost anchor by which to judge the reasonableness of the proposed increased rates. The extensive record in AR61-2 as the Commission itself found shows the proposed rates to be unjustified. It remains to be determined what the yet-

to-be compiled cost-of-service record in AR69-1 will show. Again, the Commission has no foundation upon which to ground the required findings necessary to support the Settlement Proposal. *Public Service Comm'n of N.Y.* v. *FPC*, No. 23446 (D.C. Cir., June 29, 1970). The proper forum for determination of the issues raised by the Settlement Proposal is the AR69-1 proceeding now in progress.

[11,961]

IV

The Settlement Proposal Is Unlawful Because It Seeks to Convert Consumer Refunds to Producer Capital.

Producer rates in excess of those set forth in Opinion No. 546 (set forth above) were collected subject to refund, and at this time there are approximately $376 million in refunds due and owing the consumers. The Settlement Proposal would immediately forgive $226 million of these refunds and would permit the producers to retain the remaining $150 million subject to liquidation at the rate of 1¢ per Mcf on the future commitment of new gas reserves. Thus, the Settlement Proposal would convert up to $376 million of refund moneys to producer capital.[10] Traditionally, ratepayers have been required to reimburse natural gas companies subject to the Commission's jurisdiction for their cost of service, including the fair cost of capital. *E.g.*, *Hope Natural Gas Co.* v. *FPC*, 320 U.S. 591 (1944). The Settlement Proposal advances the novel thesis that the taxpayers should now also advance the producers' capital needs (via forgiveness of refunds).[11] Not only is such a con-

[10] Additionally, to the extent which the settlement rates provide in excess of a fair return, this constitutes consumer-contributed capital exacted contrary to the Natural Gas Act.

[11] *See* footnote 10, *supra*.

cept in violation of the Natural Gas Act's cost-of-service ratemaking principles but furthermore there is no guarantee that such moneys will be dedicated to gas exploration and development or that even if it is so dedicated, the same consumers who contributed this capital via excess rates will reap the benefits therefrom. In short, the provision for the foregiveness of refunds in the Settlement Proposal is not only unlawful but also without any redeeming value to the confiscated consumers.

In addition to the defective nature of the provision for the retention of refunds, the Settlement Proposal has provided a mechanism whereby affected producers may "work off" the arbitrarily reduced $150 million refund obligation. This mechanism is a sham for the following reasons:

[11,962]

a. The refund commitment of the producers as to the $150 million can be extinguished through new reserve additions that would be made in the ordinary course of business. Therefore, even the volume of new reserves committed during the 1968 and 1969 supposed "low years" of activity in the Southern Louisiana area if continued in the future would provide ample opportunity for the producers to extinguish any refund obligation relating to the $150 million. The Settlement Proposal thus effectively rewards those companies which charged the most exorbitant rates, without any concurrent guarantees of eliciting additional supplies of gas, above and beyond normal production.

b. It is no answer to the above to argue that a disproportionate part of the refund dollars are owed by relatively few of the producers which persistently charged the highest rates. The Settlement Proposal virtually in-

sures that any producer which is unable to work off its refund obligation in the normal course of business will nevertheless be given a reprieve. Section 8.2.5 provides (1) for an automatic extension of two years for any producer which at the end of the five year period has discharged 65% or more of its aggregate obligation and (2) for a discretionary extension of two years for any producer which at the end of the five year period has not discharged at least 65% of its refund obligation but which has made a "sincere and diligent effort to discharge its refund obligations." Additionally, for those producers granted the two year extension a "corporate warranty contract" commitment (i.e. contract between a producer and purchaser whereby the producer warrants that it will deliver to the purchaser a specific volume of gas from new gas reserves in the Southern Louisiana area for a fixed period not to exceed 20 years, at stated prices and conditions) may also be used to obtain refund credit. Section 8.2.6 provides that any producer unable to satisfy its refund obligation within the five (or seven) year period may nevertheless petition the Commission for forgiveness of the remaining refunds where "it has already made a sincere and diligent effort to find gas to meet its total refund obligation but has failed to do so."

[11,963]

c. The definition of "New Gas Reserves" in Section 1.4 as meaning the "estimated original recoverable reserves in place" is wholly inadequate in that there is no assurance that the original estimated recoverable reserves will bear any reasonable relationship to the actual recoverable reserves. The fact that "the reserve estimate shall be subject to review by the Staff of the Commis-

sion" establishes only a discretionary spotcheck procedure without adequate consumer safeguards.

[11,964]

V

The Settlement Proposal Is Contrary to the Public Interest in That Its Thrust Is Not to Elicit New Sources of Gas Supply But to Provide a Retroactive Windfall to Owners of Existing Reserves, Which Is Calculated to Have Significant Anticompetitive Consequences.

To the extent that recent developments in the supply and demand picture might justify additional incentives to elicit "new" sources of gas supply, it seems obvious that such incentives should be designed to spur *new* exploration and development activity by *new* entrepreneurs as well as old. Unfortunately, the incentive features of the proposed settlement are not primarily designed to accomplish that result. What the carefully drafted language of the Settlement motion does not reveal is that the bulk of the incentive takes the form of forgiveness of refunds legally due the consumers and generous rate concessions on flowing gas from existing reserves. The incentives designed to elicit new sources of supply are of a significantly lesser magnitude.

The impact of the incentive "package" which the Settlement Proposal embodies may be easily and graphically demonstrated.

There are currently about 60 trillion cubic feet of gas reserves in the Southern Louisiana area which were committed as of October 1, 1968 in interstate commerce but

not yet delivered.[12] the proposed settlement would raise the ceiling rate for this "old" gas, already discovered and under contract, by an average of about 4 cents per Mcf over the rates initially approved by the Commission and the Fifth Circuit. This will ultimately channel an additional $2.4 billion to owners of these existing reserves. An even more outrageous retroactive bonus is embodied in the Settlement Proposal's characterization of gas produced

[11,965]

under contracts dated after October 1, 1968 as "new" gas entitled to the settlement's 26 cent "incentive" rate, which is about 6.75 cents per Mcf higher than the earlier approved rates. Applied to the approximately 14 trillion cubic feet already committed since that date, this feature pours another $945 million "incentive" dollars into the coffers of those producers with respect to gas already committed. To this $3.345 billion retroactive windfall must be added the $226 million of consumer refunds which would be unconditionally forgiven. Thus, the settlement would afford at least a $3.571 billion retroactive largesse to the owners of existing reserves without one additional cubic foot of new reserves being added to those currently existing and committed supplies and without any guarantee that these moneys will be invested in the Southern Louisiana area for the exploration of gas.

This windfall may be contrasted with the 26 cent incentive rate for gas dedications actually resulting from

[12] The figures used to demonstrate the retroactive impact of the Settlement Proposal are necessarily approximations due to the "numbers game" played by the producers to confuse the matter. The absence of accurate statistics further emphasizes the need for the construction of a full and adequate record in AR69-1 from which the Commission can make appropriate and accurate findings.

"new" exploration and development activity. Applying this rate to the 15 trillion cubic feet target which will trigger additional rate increases, this feature will provide a $975 million incentive for such production over the earlier approved rates. To this must be added the forgiveness of $150 million of the consumer refunds keyed to new gas dedication, for a total of only $1.125 billion colorably calculated to produce new sources of supply. Both the old and new gas will be subject to further "incentives" under the rate escalation provisions of the settlement.

Thus, when all the rhetoric about "gas shortages" and the dire need for "incentives" for *new* sources of gas supply is cleared away, what have the settlement proponents wrought? Of the $4.7 billion "incentive" provided for by the settlement, $3.6 billion, or 76% of the "package", is allocated to the owners of existing reserves who will receive this windfall without committing any new gas to the nation's supply.

[11,966]

The only sop to the consumers, whose $376 million of putative refunds would be converted into a capital fund for the producers in a dramatic reversal of traditional regulatory philosophy, is the requirement that the producers repay $150 million of the $376 million unless they opt to "work off" that obligation at the rate of 1¢ per Mcf of new reserve additions within 7 years (or unless it is entirely forgiven under the terms of the Settlement Proposal).

Perhaps even more shocking is the utilization of this settlement proposal as a vehicle to include a general tracker provision (4.6) permitting the pipelines to automatically pass on these increases to consumers without

notice or opportunity on the part of such consumers to contest such increases. This departure from previous Commission policy cannot be justified on any basis, though it goes far to explain the support of the pipelines for the Settlement Proposal.

In conclusion, the primary effect of the proposal will *not* be to encourage greater exploration and development efforts for new sources of gas supply, particularly by new entrants in the market. Rather, by allocating the bulk of the $4.7 billion "incentive" dollars to the owners of existing reserves, it will provide a retroactive windfall to those producers, thus strengthening their hold on their respective shares of the Southern Louisiana market with potentially harmful anti-competitive consequences. Consequently, the proposed settlement must be viewed not only as contrary to the regulatory policy of the Natural Gas Act, but as raising serious anticompetitive implications which the Commission should not further by approving this proposed settlement.

[11,967]

WHEREFORE, for the foregoing reasons, the American Public Gas Association and the Consumer Federation of America respectfully request that the Commission deny UDC's Motion for Promulgation of Settlement Proposal.

Respectfully submitted,

AMERICAN PUBLIC GAS ASSOCIATION

By /s/ Charles F. Wheatley, Jr.
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December 11, 1970

[11,968]

[Caption Omitted]

REPLY OF TEXAS EASTERN TRANSMISSION CORPORATION TO THE ANSWERS OF CONTINENTAL OIL COMPANY AND SUN OIL COMPANY TO MOTION FOR PROMULGATION OF SETTLEMENT PROPOSAL

Texas Eastern Transmission Corporation (Texas Eastern) submits this reply to the answers filed by Continental Oil Company (Continental) and Sun Oil Company (Sun) to the Motion of the United Distribution Companies (UDC) for Promulgation of Settlement Proposal in the captioned proceedings. Texas Eastern has heretofore joined in the answer filed by the Pipeline Purchaser Group supporting the UDC Motion. Accordingly, this reply is limited to a discussion of the inconsistent and erroneous attempts by Continental and Sun to refute or modify the plain meaning of the provisions of Section 2.7 of the Settlement Proposal, which provides that the settlement terms do not dispose of the issues involved in the Rayne Field proceeding, Docket No. G-12446, *et al.* In effect what Continental and Sun seek is a Commission order which will permit them to "have their cake and eat it too." They seek a combination of Opinion 565-A and the Settlement Proposal

[11,969]

which would permit them to receive the area price over the life of the Rayne Field reserves and to have any refund obligation disposed of in accordance with the applicable provisions of the Settlement Proposal without assuming any of the burdens imposed by other provisions of the settlement. However, as detailed herein, the Settle-

ment Proposal and Opinion No. 565-A are fundamentally incompatible.

I.

At the outset, it should be noted that the answers of Continental and Sun were filed before the Commission denied rehearing of Opinion No. 565-A by order issued November 24, 1970. In that order Commissioners Carver and Brooke withdrew their concurrence in that portion of Opinion 565-A which would permit the Rayne Field producers to collect the area price until the field is depleted. Thus, this holding is no longer supported by a majority of the Commissioners voting. In view of this modification of Opinion 565-A, the matters raised in the answers of Continental and Sun may have become moot. However, since their answers have not been withdrawn or modified, this reply will be directed to the errors in such answers.

[11,970]

II.

The inconsistency in the answers filed by Continental and Sun is spotlighted by their conflicting construction of the effect of Section 2.7 of the Settlement Proposal, which provides:

> "The terms hereof do not dispose of any issues in the Rayne Field [Docket Nos. G-12446, et al] or Bastian Bay Field [Docket Nos. CI66-910, et al] proceedings."

Continental recognizes that the clear and unequivocal language of Section 2.7 means what it says—that the provisions of the settlement are not dispositive of any issue in the *Rayne Field* case. Continental claims that this provision "is in conflict with" paragraph 25 of Opin-

ion No. 565-A, and, therefore, requests the Commission to delete Section 2.7 from the Settlement Proposal.

On the other hand, Sun claims that notwithstanding the express language of Section 2.7, "the terms and provisions of the Commission's Opinion 565-A are dispositive of the *Rayne Field* proceedings." Based upon this self-serving construction of Section 2.7, Sun supports UDC's motion and urges Commission approval of the Settlement Proposal. The fatal defect in Sun's argument is that it ignores the unambiguous terms of Section 2.7 of the Settlement Proposal and makes the terms of

[11,971]

the settlement dispositive of the producer refund and price issues in the *Rayne Field* case. It is frivolous to argue that a settlement proposal which expressly disavows any intent to dispose of any issues in the *Rayne Field* proceedings should be construed as being dispositive of the excluded issues.

III.

Aside from their differences as to the effect of Section 2.7, Continental and Sun seek "full applicability of all of the terms and provisions of the settlement proposal to the Rayne Field sales' without modifying in any way the Commission's disposition of the *Rayne Field* case in Opinion No. 565-A issued September 29, 1970. However, this is impossible. "Full applicability" of all the terms and provisions of the Settlement Proposal to the Rayne Field transaction would require substantial modification of Opinion No. 565-A. For example, Opinion No. 565-A abrogates the $134,395,700 contract consideration agreed upon by Texas Eastern and the Rayne Field producers and provides that the producers will receive the applicable ceiling area rate for so long as production is obtained

from Rayne Field. By contrast, Section 2.1 of the Settlement Proposal provides:

> "*Contract Price.* Notwithstanding any other provision herein contained, no rate may exceed the total price including any adjustments to such price as allowed by contract."

Therefore, either Section 2.1 would have to be deleted from the Settlement Proposal or Opinion No. 565-A would have to be substantially modified.

Another example of the incompatibility of Opinion No. 565-A with the Settlement Proposal concerns the right of a pipeline to receive make-up gas for which prepayments have been made. Under Opinion No. 565-A, Texas Eastern's contractual right to receive make-up gas after payment of $134,395,700 is abrogated because Texas Eastern is required to pay the Rayne Field producers the applicable area rate for the life of the field. Hence, there would be no make-up gas available at any time. But if the Settlement Proposal were made "fully applicable" to the Rayne Field transaction, then Texas Eastern's right to take make-up gas would be governed by Section 2.6 thereof, which provides:

> "*Take or Pay Provision as to Non-Associated Gas.* From and after the Effective Date, non-associated gas which has been paid for but not taken may be taken or 'made-up' in the manner provided by the contract at any time within five (5) years (or longer if permitted by the contract) from the end of the contract year in which the obligation to take occurred; provided, however, the purchaser must take the gas within the term of the contract under which the gas is being purchased or the right to take shall

lapse upon termination of the contract unless the contract otherwise provides."

[11,973]

Section 2.6 represents a continuation of Commission policy that pipelines should be allowed a reasonable period in which to receive make-up gas where advance or prepayment have been made. Application of this Section 2.6 of the Settlement Proposal to the *Rayne Field* case would obviously require substantial modification of Opinion No. 565-A.

One further example should suffice to demonstrate why Opinion No. 565-A would have to be modified if the Settlement Proposal were applied to the *Rayne Field* case. In Opinion No. 565-A, the Commission deferred ordering producer refunds or the flow-through of such refunds pending decision in the Southern Louisiana area rate proceedings. However, Section 8 of the Settlement Proposal, which governs refunds to be made by producers, is wholly inapplicable to the Rayne Field situation. Section 8 relates solely to "over-payments" by pipelines for gas actually "delivered" by producers. Such "over-payments" were expensed by the pipelines. By contrast, the payments by the Rayne Field producers to Texas Eastern were not over-payments for gas actually delivered which were passed on to Texas Eastern's customers, but were advance or prepayments which were never charged to Texas Eastern's customers. Therefore, under Section 8 no refunds could be required of the Rayne Field producers or of Texas Eastern.

[11,974]

CONCLUSION

For the foregoing reasons, Texas Eastern urges the Commission to leave Section 2.7 of the Settlement Proposal intact and to reject Sun's construction of the effect of Section 2.7.

Respectfully submitted,

/s/ Lynn R. Coleman
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Attorneys for Texas Eastern Transmission Corporation

December 10, 1970

CERTIFICATE OF SERVICE

I certify that copies of the foregoing document have been served on all parties in accordance with Section 1.17 of the Commission's Rules of Practice and Procedure.

Dated this 10th day of December, 1970.

/s/ Lynn R. Coleman
LYNN R. COLEMAN

[11,978]

[Caption Omitted]

COMMENTS OF CABOT CORPORATION RELATING TO SETTLEMENT PROPOSAL

Pursuant to the Federal Power Commission's November 9, 1970 "Notice of Motion for Promulgation of Settlement Proposal," Cabot Corporation hereby makes its comments relating to the Motion for Promulgation for Settlement Proposal heretofore filed by the United Distribution Companies, as follows:

1.

Cabot Corporation respectfully urges that the Commission grant the United Distribution Companies' Motion in all respects.

2.

There exists an ever worsening gas supply crisis which is supported by the record in the two subject Area Rate Proceedings. Such crisis dictates that an expeditionsly arrived at solution be found. UDC's Settlement Proposal constitutes such solution.

[11,979]

3.

Cabot believes and therefore represents that such proposal, if approved, will have the effect of achieving a price structure which would bring forth significant additional supplies of gas for the interstate market now being served by the Southern Louisiana Area, and at the same time protect the consumer. Long-standing uncertainty and instability in gas prices in Southern Louisiana would there-

by be ended. Moreover, funds would thereby be made available to producers for the development of additional gas reserves in Southern Louisiana. It is therefore submitted that the Commission's approval and promulgation of such Settlement Proposal is in the public interest and should be adopted by the Commission in as expeditious a manner as possible, consistent with the requirements of due process.

4.

These comments are made on the express condition that same shall in nowise prejudice the position or rights of Cabot in the subject Proceedings.

Dated this 8th day of December, 1970.

Respectfully submitted,

CABOT CORPORATION
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By /s/ William C. Charlton
WILLIAM C. CHARLTON
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Cabot Corporation

Order

[11,991]

[Caption Omitted]

ORDER GRANTING IN PART AND DENYING IN PART APPLICATIONS FOR REHEARING OF ORDER NO. 413 AND ORDER ISSUED IN DOCKET NO. AR69-1

(Issued December 24, 1970)

The Municipal Distributors Group (MDG), the Public Service Commission of the State of New York (PSCNY) and the Associated Gas Distributors (AGD) on November 27, 1970 filed applications for rehearing of the Commission's Order No. 413 issued October 27, 1970 in Docket No. R-394 and the associated order issued the same day in Docket No. AR69-1 implementing Order No. 413. Order No. 413 terminated the moratorium on above ceiling increased rate filings in Southern Louisiana prescribed in paragraphs (f) and (g) of Section 154.105 of the Commission's Regulations under the Natural Gas Act (18 CFR 154.105(f) and (g)) and Ordering Paragraph (B) of Opinion No. 546-A (41 FPC 301 at 340). The order in Docket No. AR69-1 established the procedures to be followed in connection with increased rate filings made as a result of the lifting of the moratorium.

PSCNY in its application for rehearing points out that in Order No. 413 we did not mention its opposition to the proposed lifting of the moratorium. We did, however, reject the basic position advanced by PSCNY that the moratorium should not be lifted withont an evidentiary hearing when we specifically rejected similar contentions by MDG and the Public

Service Commission of the State of Wisconsin.

We have by separate order today reopened the initial area rate proceedings in the Southern Louisiana area, Docket Nos. AR61-2, *et al.* Our original decisions in those proceedings, Opinion Nos 546 (40 FPC 530) and 546-A (41 FPC 301), have been affirmed by the U. S. Court of Appeals for the Fifth Circuit, *Austral Oil Co.* v. *FPC*, 428 F.2d 407 (CA5 1970). Petitions for a writ of Certiorari to the Fifth Circuit were denied by the U. S. Supreme Court on December 7, 1970.

The Fifth Circuit's opinion stressed that the determination of whether the moratorium provisions should be modified was to be reviewed without reference to their qualified affirmance by that court, 428 F.2d at 431. The Court also cautioned that if supply problems exist, quick remedies will be required. We take this to be a judicial mandate to reexamine the moratoriums which were established on the basis of the record in Docket Nos. AR61-2, *et al.* This mandate and the reopened record in those proceedings lend additional support to our determination that prompt action is required.

We did not, in either Order No. 413 or the accompanying order in Docket No. AR69-1, impose any limitation on rate increase filings which might be made subsequent to the lifting of the moratorium. Rate increases filed thereafter were therefore subject only to the price limitations of the governing contracts. AGD states in its application for rehearing that it agrees with the objective of the Commission's action but suggests that such rate increases be limited to the rate levels set forth in the settlement proposal filed in Docket Nos. AR61-2, *et*

al., and AR69-1 subsequent to the issuance of Order No. 413 and the order in Docket No. AR69-1.[1]

We are well aware that a few parties have responded to the settlement proposal by contending that the settlement rates are either too low or too high. The settlement proposal, on the other hand, has widespread support among many of the interested parties involved in those proceedings. While we

[11,993]

presently make no determination as to the merits of these respective positions, we believe the proposed settlement ceilings provide a justifiable temporary ceiling for increased rate filings. We shall therefore modify our previous orders regarding the moratorium provisions so as to limit rate increase filings, as permitted by contract, to the levels set forth in the filed settlement proposal. The moratorium provisions, as so limited, will expire on June 30, 1971 absent further Commission action.

The applications for rehearing set forth no further new facts or principles of law which were not fully considered in Order No. 413 and the order in Docket No. AR69-1, or which, having now been considered, warrant any modification of those orders, except as hereinafter provided.

The Commission finds:

It is necessary and appropriate in the public interest and for carrying out the provisions of the Natural Gas

[1] See Motion of United Distribution Companies for Promulgation of Settlement Proposal, filed November 6, 1970 in Docket Nos. AR61-2, *et al* and AR69-1.

Act, that Order No. 413 and the order in Docket No. AR69-1 be modified as hereinafter ordered.

The Commission orders:

(A) Order No. 413 is modified to prohibit any increased rate filing in excess of:[2]

(a) For contracts dated prior to October 1, 1968

Onshore 22.375 cents per Mcf

Offshore 21.375 cents per Mcf[3]

(b) For contracts dated on or after October 1, 1968[4]

Onshore 26.0 cents per Mcf

Offshore 26.0 cents per Mcf

(B) The limitations on increased rate filings set forth in Ordering Paragraph (A) above shall expire on June 30, 1971.

(C) Any increased rate filing made as a result of the issuance of Order No. 413 which is in excess of the applicable level prescribed in Ordering Paragraph (A) above is rejected *ab initio* to the extent it exceeds the

---

[2] All prices stated at 15.025 psia. The ceiling prices are subject to upward or downward Btu adjustment as provided in Opinion Nos. 546 and 546-A. The ceiling price for offshore gas delivered by a producer onshore shall be the applicable offshore price plus 1.0 cent per Mcf.

[3] The onshore ceiling shall apply to gas produced offshore where there is a dispute between Louisiana and the United States as to jurisdiction.

[4] Including those contracts set forth in Appendix B of Commission Order No. 546-A.

applicable level prescribed in Ordering Paragraph (A) above. Any producer who has made such an above ceiling increased rate filing may collect the applicable rate level prescribed in Ordering Paragraph (A) above, subject to refund, as of January 10, 1971 or as of the expiration of the suspension period for such filing in accordance with the provisions of the order issued October 27, 1970 in Docket No. AR69-1.

(D) Except as herein granted, the applications for rehearing of Order No. 413 and the accompanying order in Docket No. AR69-1 are denied.

(E) The Secretary of the Commission shall cause prompt publication of this order to be made in the Federal Register.

By the Commission.

GORDON M. GRANT
Secretary

[SEAL]

[11,995]

ORDER REOPENING AND CONSOLIDATING AREA RATE PROCEEDINGS AND ESTABLISHING PROCEDURES

(Issued December 24, 1970)

On September 25, 1968 and March 20, 1969, respectively, the Commission issued in Docket Nos. AR61-2, *et al.* Opinion Nos. 546 (40 FPC 530) and 546-A (41 FPC 301) setting just and reasonable rates for jurisdictional sales of natural gas in Southern Louisiana. Those orders were appealed to the U.S. Court of Appeals for the Fifth Circuit, which handed down its decision on March 19, 1970. The court, affirmed but stated: "The mandate of this court should not, however, be interpreted to interfere with Commission action that would change the rates we have approved here." *Austral Oil Co.* v. *F.P.C.*, 428 F.2d 407, 444-5 (CA5 1970) (hereinafter *Austral*). This statement of the Commission's continuing jurisdiction over the AR61-2, *et al.* rates was reaffirmed by the Fifth Circuit in its decision on petition for rehearing issued June 16, 1970. The court there stated: "We wish to make crystal clear the authority of the Commission in this case to reopen any part of its order that circumstances require be reopened. * * * The Commission can make retrospective as well as prospective adjustments in this case if it finds that it is in the public interest to do so." (*Austral Oil Co.* v. *F.P.C.*, —— F. 2d ——, Fifth Circuit, slip opinion dated June 16, 1970, mimeo page 2). A number of parties to the AR61-2, *et al* proceedings filed petitions for Certiorari requesting the Supreme Court to review the decision of the Fifth Circuit. On December 7, 1970, the Supreme Court denied all such petitions.

[11,996]

In Opinion No. 546, Ordering Paragraph (H), we left the proceedings in Docket Nos. AR61-2, *et al.* open for such further action as may be necessary with respect to individual respondents and such other action as may be necessary in the premises. Thereafter, in Opinion No. 546-A, Ordering Paragraphs (L) and (M), we denied motions of certain respondents to reopen the record in these proceedings for the receipt of additional evidence and to reopen and consolidate these proceedings with the proceedings in Docket Nos. AR69-1.

In light of the decision in *Austral*, we believe it is in the public interest that Docket Nos. AR61-2, *et al.* be reopened and consolidated with the second round area rate proceeding in Southern Louisiana, Docket No. AR 69-1, which is now in hearing, so that the parties may be given an opportunity to submit, if they so desire, relevant evidence concerning whether the rates established in Opinion Nos. 546 and 546-A should be changed in light of the criteria set forth in *Austral*. The motion of producer respondents filed herein on July 2, 1970, requesting that the proceedings in Docket Nos. AR61-2, *et al.* be reopened and consolidated with the proceeding in Docket No. AR69-1 will therefore be granted.

In a related development the United Distribution Companies filed on November 6, 1970 in Docket Nos. AR61-2, *et al.* and AR69-1 a motion for promulgation by the Commission of a Settlement Proposal, and for approval thereof, pursuant to Section 1.12 of the Rules of Practice and Procedure. The Settlement Proposal includes issues in Docket Nos. AR61-2, *et al.* and AR69-1. A notice of the motion for promulgation of the settlement was issued by the Commission on November 9, 1970. Comments have been filed in response thereto. The settlement proposal will be incorporated and thereby made a part of the con-

solidated proceedings in Docket Nos. AR61-2, *et al.* and AR69-1.

On July 2, 1970 we issued an order in Docket Nos. AR 61-2, *et al.* continuing the stay of our rate orders in Opinion No. 546, as amended, until further order of the Commission. We believe it remains in the public interest to stay any rate reductions, refunds or other obligations required to be made by that opinion.

[11,997]

The Commission finds:

Is is necessary and appropriate in the public interest and for carrying out the provisions of the Natural Gas Act that the area rate proceedings in Docket Nos. AR61-2 *et al.* be reopened and consolidated with the proceeding in Docket No. AR69-1 and that the stay of our rate orders in Opinion No. 546, as amended, be continued.

The Commission orders:

(A) The motion of producer respondents filed herein on July 2, 1970, requesting the proceedings in Docket Nos. AR61-2, *et al.* be reopened and consolidated with the proceeding in Docket No. AR69-1 is hereby and to that extent granted.

(B) All evidence submitted in the consolidated proceeding shall be filed on or before February 15, 1971.

(C) Appendix A to the *Motion of United Distribution Companies For Promulgation of Settlement Proposal*, filed November 6, 1970, is hereby incorporated and made a part of the record in the consolidated proceedings.

(D) Any rate reductions, refunds or other obligations required to be made in Opinion No. 546, as amended, are hereby stayed until further order of this Commission.

By the Commission.

KENNETH F. PLUMB,
Acting Secretary.

[SEAL]

[11,999]

[Caption Omitted]

RESPONSE OF PAN AMERICAN PETROLEUM CORPORATION TO APPLICATION OF ASSOCIATED GAS DISTRIBUTORS FOR REHEARING ON ORDER NO. 413

Pan American Petroleum Corporation (Pan American) pursuant to Section 1.34(d) of the Commission Rules, 18 C.F.R. § 1.34(d), hereby responds to the Application for Rehearing on Order No. 413 filed on November 27, 1970, by the Associated Gas Distributors (AGD) to show that relief requested by AGD is unduly discriminatory as against Pan American and in the circumstances of these cases amounts to granting an undue preference to others contrary to requirements of Sections 4(b) and 5(a) of the Natural Gas Act, 15 USC § 717c(b) and § 717d(a).

As is demonstrated in the "Response of Pan American Petroleum Corporation to Motion for Promulgation of Settlement Proposal" filed December 11, 1970, in Dockets No. AR61-2 and AR69-1, certain provisions of the Settlement Proposal filed by the United Distribution Companies

[12,000]

on November 6, 1970, unduly discriminate against producers such as Pan American that as to nearly all of their Southern Louisiana gas were not collecting on October 1, 1968, rates higher than the rates proposed in such Settlement Proposal. Pan American's Response also demonstrated that under the Settlement Proposal producers suffer a detriment under the Moratorium prescribed in Opinion No. 546 issued September 25, 1968, in direct proportion to the amount by which rates being collected on

October 1, 1968, do not exceed the area rates prescribed in Opinion No. 546.

Producers would suffer a detriment under the Moratorium proposed in the AGD application for rehearing in direct proportion to the amount by which rates being collected as of October 1, 1968, do not exceed the rate levels propounded in the November 6, 1970 Settlement Proposal. The anomalous, unjust, inequitable and unduly discriminatory result flowing from adoption of the Moratorium proposed by AGD would be that the proponents of the November 6, 1970 Settlement Proposal whose October 1, 1968, rates are substantially above the settlement rates and thus above the proposed Moratorium ceiling rates are allowed to continue to collect such higher rates, but producers such as Pan American who are not similarly situated as of October 1, 1968, rates and do not support the Settlement Proposal are prohibited from collecting rates above such settlement rates. AGD does not show, as indeed it cannot, that producers with low October 1, 1968, rates have or should have any less right to now collect rates above the proposed settlement rates than producers whose October 1, 1968, rates are above the proposed settlement rates.

In its November 17, 1970, letter transmitting notices of rate increases pursuant to Order No. 413, Pan American showed why the pipeline tracking provisions included in Order No. 413 operated inequitably as between producers and requested relief there from. In addition to denying such relief, the Commission's "Order Granting in Part and Denying in Part Applications for Rehearing of Order No. 413 and Order Issued in Docket No. AR69-1"

issued December 24, 1970,[1] imposes further inequitable treatment by prescribing the discriminatory treatment requested in AGD's Application for Rehearing.

In the *Hugoton-Anadarko Area Rate Proceeding*, Docket No. AR64-1, the *Texas Gulf Coast Area Rate Proceeding*, Docket No. 64-2, and the *Other Southwest Area Rate Proceeding*, AR67-1, Pan American showed that area pricing methods must be implemented so as not to discriminate between producers by arbitrarily imposing different revenue levels on different producers[2] or by concentrating among a few producers gas revenue cash flow levels adequate to find and develop needed gas supplies. Imposition of ceiling prices as requested by AGD would have the effect of requiring

[12,002]

significantly different Southern Louisiana revenue levels as between producers. The Application for Rehearing filed by AGD does not show that any one producer should be required to accept a lower revenue level than other producers.

The decision of the Court of Appeals in *Austral Oil Co., et al.* v. *FPC*, 428 F.2d 407 (5th Cir. 1970), the Brief for the Federal Power Commission in Opposition filed in the

[1] Although AGD's Application for Rehearing contemplated that ceiling prices would be applied in accordance with criteria promulgated in Commission Opinion No. 567, the Commission order is not clear in this respect.

[2] Among other things, the Commission must consider the effect of contracting prohibitions prescribed in § 154.93 of the Commission Regulations and whether the ceiling price method is consistent with such contracting prohibitions.

Southern Louisiana Area Rate Cases, Nos. 669, *et al.*, October Term 1970, Supreme Court of the United States, and the November 6, 1970 Settlement Proposal itself, all recognize that a principal determinant of any individual producer's response to the gas supply crisis is the current gas revenue level of such producer. In its December 11, 1970, Response to the Settlement Proposal, Pan American clearly demonstrated that distribution of incentive among producers is a principal determinant of the size of the industry-wide incentive. Commission orders that have the effect of concentrating incentive among a few producers have the effect of unnecessarily reducing the industry-wide incentive. Commission orders that prescribe the broadest possible distribution of incentive provide for the largest possible industry-wide incentive.

In *Austral Oil Co., et al.* v. *FPC*, *supra*, the Court's statements at 428 F.2d 441, *et seq.*, show that the Commission has an affirmative duty to make findings as to distribution of incentive among producers flowing from gas revenue levels allowed individual producers. Neither AGD's Application for Rehearing nor the November 6, 1970 Settlement Proposal, nor Ordering Paragraph (B) of the Commission's December 24, 1970 "Order

Reopening and Consolidating Area Rate Proceedings and Establishing Procedures" relieve the Commission from performance of this affirmative duty. Inasmuch as the relief requested by ADG would tend to concentrate rather than disperse incentive among producers, such relief should not be granted.

WHEREFORE, Pan American Petroleum Corporation respectfully requests that the Application for Rehearing

of AGD filed November 27, 1970, be denied and that the Commission's December 24, 1970 "Order Granting in Part and Denying in Part Applications for Rehearing of Order No. 413 and Order Issued in Docket No. AR69-1" be revoked and the Commission issue an order denying all applications for rehearing of Order No. 413.

Respectfully submitted,

PAN AMERICAN PETROLEUM CORPORATION
Original Signed by
Wm. H. Emerson
WM. H. EMERSON
Its Attorney
P. O. Box 591
Tulsa, Oklahoma 74102

Dated at Tulsa, Oklahoma this 6th day of January, 1971

[12,047]

[Caption Omitted]

ORDER EXPANDING AREA RATE PROCEEDING

(Issued January 26, 1971)

On March 20, 1969 the Commission issued an investigation and proposed rulemaking covering certain sales of natural gas from offshore Southern Louisiana. This proceeding was enlarged by order of December 15, 1969 to encompass all vintages of gas produced from the entire Southern Louisiana area. Docket Nos. AR61-2, *et al.* was reopened on December 24, 1970 and consolidated with AR69-1.

While this area rate proceeding has been in progress, there have been and will continue to be rate increase filings suspended under Section 4 of the Natural Gas Act and applications for certificates for new sales receiving temporary certificates under Section 7 of the Act. This proceeding shall be expanded to apply to all Section 4 rate suspension proceedings and all Section 7 certificate proceedings which involve sales in the hearing area which have or may be instituted during the pendency of this proceeding.

The Commission finds:

It is necessary and appropriate for purposes of carrying out the provisions of the Natural Gas Act, particularly, but not in limitation of the foregoing, Sections 4, 5, 7, 8, 10, 14, 15, and 16 thereof, that all proceedings involving sales of natural gas in the Southern Louisiana area be consolidated into this area rate proceeding.

Order Expanding Area Rate Proceeding

[12,048]

The Commission orders:

All rate suspension proceedings under Section 4 of the Natural Gas Act and all certificate proceedings under Section 7 of the Natural Gas Act which are in the Southern Louisiana area and which may arise during the pendency of this proceeding are hereby consolidated into this area rate proceeding.

By the Commission.

GORDON M. GRANT,
Secretary.

[SEAL]

[12,060]

[Caption Omitted]

ORDER DENYING REHEARING AND REQUEST FOR STAY

(Issued February 10, 1971)

Pan American Petroleum Corporation on January 11, 1971, Mobil Oil Corporation (Mobil) on January 22, 1971, and Lake Washington Inc. and U. S. Oil of Louisiana Inc. on January 25, 1971, filed applications for rehearing of the Commission's order on rehearing issued December 24, 1970 in the above-entitled proceedings insofar as that order modified Order No. 413 so as to prohibit any increased rate filing for a sale of natural gas in Southern Louisiana in excess of the applicable ceiling prescribed therein. Concurrently with its application for rehearing, Mobil filed a request for a stay of the December 24 order pending the outcome of judicial review of the Commission's action therein.

The applications for rehearing set forth no further facts or principles of law which were not fully considered in the December 24 order, or which, having now been considered, warrant any modification of that order. Nor is there any justification for granting a stay here.

[12,061]

The Commission orders:

The above applications for rehearing and Mobil's request for a stay of the order issued December 24, 1970 in the above-entitled proceedings are denied.

By the Commission.

KENNETH F. PLUMB
Acting Secretary.

[SEAL]

[12,062]

[Caption Omitted]

ORDER DENYING MOTION FOR RECONSIDERATION

(Issued February 17, 1971)

On January 22, 1971 Mobil Oil Corporation filed an application for rehearing and reconsideration of the Commission's order of December 24, 1970, reopening the proceeding in Docket Nos. AR61-2, *et al.* and consolidating it with the proceeding in Docket No. AR69-1).[1] The order also incorporated and made a part of the record in the consolidated proceedings the settlement proposal which was filed in these dockets on November 6, 1970 by the United Distribution Companies Group. Mobil objects to such incorporation and requests the December 24 order be modified so as to incorporate into the record all answers, comments, responses or other pleadings filed with respect to the settlement proposal, or in the alternative to strike the settlement proposal from the record.

The order of December 24 incorporated the settlement proposal in the record in these consolidated

[12,063]

proceedings so that all parties were aware of its filing and could develop the record in such manner as they might deem appropriate. The motion filed by the United Distribution Companies Group was not incorporated in

[1] The interlocutory order of December 24 is not subject to an application for rehearing. Pursuant to Mobil's request, its filing will be considered as a motion for reconsideration.

the record nor is there any reason to incorporate the various comments or answers filed with respect thereto. The motion, answers and comments will be fully considered when the proceedings are before the Commission for decision.

The Commission orders:

The motion of Mobil Oil Corporation for reconsideration of the order of the Commission issued herein on December 24, 1970, as amended, is denied.

By the Commission.

KENNETH F. PLUMB
Acting Secretary

[SEAL]

[12,094]

[Caption Omitted]

PRESIDING EXAMINER'S REPORT TO THE COMMISSION FOR WAIVER OF INTERMEDIATE DECISION PROCEDURE

TO THE COMMISSION:

Pursuant to Section 1.30(c) of the Commission's Rules of Practice and Procedure, Staff Counsel, on February 4, 1971 filed a motion to waive the intermediate decision procedure, copy of which is attached. As requested, three weeks from the date of filing thereof was allowed for responses thereto. Concurrences have been filed by most of the principal intervenors. The only objection filed was by the American Public Gas Association on February 24, 1971.

This proceeding is presently near completion and it is anticipated that proof will close at the final session scheduled to commence on March 10, 1971 with cross examination of rebuttal testimony filed March 3, 1971, and cross examination by Staff Counsel of intervenors' testimony dealing with econometrics.

The transcript of the hearing to date and all exhibits thus far received in evidence are in the files of the Commission.

Accordingly, Staff Counsel's motion for omission of the intermediate decision procedure is transmitted herewith for consideration and appropriate disposition.

Respectfully submitted this 3d of March 1971.

/s/ Martin E. Rendelman
MARTIN E. RENDELMAN
Presiding Examiner

Copy to All Parties

[12,095]

Order Granting Motion

[12,095]

[Caption Omitted]

ORDER GRANTING MOTION FOR OMISSION OF INTERMEDIATE DECISION PROCEDURE

(Issued March 15, 1971)

On February 4, 1971, the Commission's staff filed in these dockets a motion for omission of the intermediate decision procedure. The motion was reported to the Commission by the Presiding Examiner on March 5, 1971, following the filing of answers. Virtually all of the principal intervenors support the motion. The only objection was filed by the American Public Gas Association.

There is a clear need to bring these proceedings to a conclusion as quickly as possible. Reference to the procedural history of the proceedings will show that it has been almost 10 years since the original Southern Louisiana area rate proceeding was instituted. Gas consumers and producers both are entitled to the establishment of definite prices at the earliest possible date. The adequacy of current gas reserve inventories to meet the increasing requirements for service is a matter of increasing concern, and it is important that the Commission evaluate the evidence at the earliest practicable time.

[12,096]

At the present time and until a decision is reached herein, the producer in Southern Louisiana does not know what the just and reasonable rate is for past sales, nor what the rate will be for future discoveries. This uncertainty as to both past and future rates can serve only to discourage exploration for new reserves. Such uncer-

tainty can best be eliminated by the prompt rendering of a decision herein.

Reference is made in the motion to the procedural circumstances here involved. As a result of the court review proceedings in Docket Nos. AR61-2, *et al.*, the rates previously set by the Commission in Opinion Nos. 546 and 546A are subject to modification. By order issued December 24, 1970, the AR61-2 proceeding was reopened and consolidated with the second-round proceeding in Docket No. AR69-1. It would not be appropriate to require or even permit a further intermediate decision in Docket Nos. AR61-2, *et al.*, since such procedure would place the examiner in the position of reviewing the prior orders of the Commission. Nor is there any reason to require an examiner's decision in Docket No. AR69-1. In order to act on the issues in the reopened proceeding in Docket Nos. AR61-2, *et al.*, the Commission must have before it not only the record in Docket Nos. AR61-2, *et al.*, but also the record in Docket No. AR69-1. This serves to demonstrate the basic interrelationship and interdependence of the consolidated proceedings, and indicates clearly that the proceedings should not be severed for purposes of decision, intermediate or otherwise.

Finally it is noted that the parties are virtually unanimous in their support of the motion. The major common-interest group participants supporting the motion include the Associated Gas Distributors, The United Distribution Companies, the Pipeline Purchasers, the major producers respondents, and the Commission's staff. The only objecting party is the American Public Gas Association.

[12,097]

However, the APGA in its answer to the motion sets forth no facts which would warrant requiring an inter-

mediate decision in light of the substantive and procedural considerations discussed above. The motion for omission of the intermediate decision procedure will accordingly be granted.

The Commission finds:

That due and timely execution of its functions imperatively and unavoidably require that the intermediate decision procedure be omitted in these consolidated proceedings.

The Commission orders:

(A) The intermediate decision procedure in these consolidated proceedings shall be omitted.

(B) Oral argument before the Commission shall be omitted.

(C) Initial briefs shall be filed on or before April 15, 1971.

(D) Reply briefs shall be filed on or before May 6, 1971.

By the Commission.

KENNETH F. PLUMB
Acting Secretary

[SEAL]

[12,193]

[Caption Omitted]

ORDER DENYING REHEARING

(Issued April 13, 1971)

Mobil Oil Corporation (Mobil) on March 15, 1971 filed an application for rehearing of the Commission's order issued February 10, 1971 in the above-entitled proceedings insofar as that order denied Mobil's request for a stay of the order issued December 24, 1970, modifying Order No. 413 so as to prohibit any increased rate filing for a sale of natural gas in Southern Louisiana in excess of the applicable ceiling prescribed therein.

In Order No. 413 we lifted the moratorium on increased rate filings imposed in Opinion Nos. 546 and 546-A. However, on rehearing we limited the lifting of the moratorium to the levels prescribed in the December 24, 1970 order. It is the latter order which Mobil seeks to have stayed.

Aside from Mobil's failure to make a strong showing that it is likely to prevail on the merits of any appeal, Mobil has failed to show that any injuries it might suffer, absent a stay, would be irreparable. The Commission has authority to permit a rate to become effective retrospectively when it has improperly refused to allow a higher rate to become effective because of an invalid moratorium. *Hunt* v. *F.P.C.*, 306 F. 2d 334, 345, n. 21 (CA 5, 1962), reversed on the other grounds, 376 U.S. 515 (1964). Moreover, the

[12,194]

Commission in the past has exercised this power by allowing producer rates to become effective as of the date

they would have become effective but for an erroneous dismissal order. *Continental Oil Co., et al.*, Docket Nos. RI64-478, *et al.*, Notice of Effectiveness issued November 23, 1964 (Docket Nos. RI62-468 and RI62-477).

Mobil's application for rehearing sets forth no further facts or principles of law which were not fully considered in the February 10, 1971 order, or which, having now been considered, warrant any modification of that order.

The Commission orders:

Mobil's application for rehearing of the order issued February 10, 1971 in the above-entitled proceedings is denied.

By the Commission.

KENNETH F. PLUMB
Acting Secretary

[SEAL]

Statement of the American Public Power Association

[13,378]

[Caption Omitted]

STATEMENT OF THE AMERICAN PUBLIC POWER ASSOCIATION IN SUPPORT OF PETITION OF THE AMERICAN PUBLIC GAS ASSOCIATION TO REOPEN PROCEEDINGS

The American Public Power Association, Intervenor, respectfully urges that the above cited petition be granted.

Mr. Jack Anderson, in signed articles in the Washington Post June 14 and 15, 1971, referring to the instant Southern Louisiana case, asserted that "studies, memos, and letters" have been submitted by responsible members of the F.P.C. staff to the Chairman which show serious discrepancies in the gas reserve figures submitted by the industry to the Commission, including (says Mr. Anderson) a staff memorandum "reiterating that the evidence indicated errors up to 40 per cent in some of the industry data," amounting to many trillions of cubic feet of gas.

The petition before you requests that this staff material be made available to the parties, and made a part of the record, and the record be reopened to permit the taking of additional evidence thereon.

Many members of the American Public Power Association are substantial users of gas for generation of electric energy. The magnitude of

[13,379]

gas reserves is not only relevant to the price of gas, but, in many cases, to the validity of the refusal of gas

companies to supply gas on a firm basis for the generation of electricity, for the stated reason that the supply is inadequate.

The material referred to by Mr. Anderson (copies of which, his articles state, he has in his possession) should obviously be made public, made a part of the record, and made subject to cross-examination by all parties. The Commission should insist upon, not resist, public disclosure of this information. It cannot possibly be ignored; it cannot properly be suppressed. If there are answers to it or explanations for it, they should of course be heard.

We have confidence that counsel for the American Public Gas Association will adequately pursue this matter, given the opportunity, and he should have the opportunity for full examination of the material referred to by Mr. Anderson.

Respectfully submitted,

/s/ Northcutt Ely
NORTHCUTT ELY
General Counsel
American Public Power
Association

June 24, 1971

[13,381]

[Caption Omitted]

PETITION ON BEHALF OF THE AMERICAN PUBLIC GAS ASSOCIATION, AND THE CONSUMER FEDERATION OF AMERICA TO REOPEN PROCEEDINGS

Pursuant to Section 1.33(c) of the Rules of Practice and Procedure of the Federal Power Commission, the American Public Gas Association, and the Consumer Federation of America [1] (Petitioners) hereby petition the Commission to reopen the above-entitled proceedings for the purpose of taking additional evidence. In support thereof, the petitioners state the following.

1. Articles appearing in *The Washington Post*, Monday, June 14, 1971 and Tuesday, June 15, 1971 by Jack Anderson [2] refer to "studies, letters and memos" by the "Commission Staff" which indicate, *inter alia*, that the reserves estimates of the American Gas Association for the Southern Louisiana area are understated. The Article of June 14, 1971 states:

[13,382]

> The American Gas Association, which speaks for the producers, estimated one part of the Louisiana reserves to be 24 trillion cubic feet. But the FPC's own experts after careful calculation, came up with a 34 trillion figure. The difference of 10 trillion

[1] The Consumer Federation of America is a party to the proceedings in Docket R-389A and joins in this petition because of the relationship thereto.

[2] Copies attached hereto as Appendix A.

cubic feet would seriously weaken the producers' case for a rate increase.

The Anderson article of Tuesday, June 15, 1971 refers to a memorandum of February 12, 1970 by "FPC's chief economist" that "two crucial sets of industry data on gas reserves 'can hardly be said to match each other" and that "[t]he industry's estimates, which should be consistent, show 'surprisingly large differences' with many specific figures 'surprisingly wide apart.'" And on December 1, a memo from the chief stated that "the evidence indicated errors up to 40 per cent in some of the industry data." The article also refers to a memo from the "chief of the FPC's producer division, who warned that 'the reliability of gas reserves estimates (by the industry) for any specific reservoir or field initially is suspect.'"

2. The above facts based on alleged existing reports by the "chief economist" and "chief of the FPC's producer division," if true, represent new evidence of vital importance to the proper determination of the issues in the Southern Louisiana Area Rate proceeding. Under the established area rate method of regulation, the price set by the Commission for gas relates directly to the reserves discovered. Accordingly, any understatement of reserves discovered would result in an overstatement of the costs per foot of successful gas well footage drilled and a corresponding higher area rate price for the gas. Thus, the proper determination of the reserves discovered is essential to the establishment of just and reasonable area rates for producers in the Southern Louisiana area.

3. The Commission has a duty to develop all of the available evidence and facts relating to the reserves of the producers upon the record in this proceeding. Section 14(b) of the Natural Gas Act provides that

> The Commission may, *after hearing*, determine the adequacy or inadequacy of the gas reserves held or controlled by any natural gas company. . .[3]

In the leading case of *Scenic Hudson Preservation Conf.* v. *FPC*, 354 F.2d 608 (D.C. Cir. 1965), *cert. denied* 384 U.S. 941, the court ruled that the record should be reopened to receive new evidence on a matter important to the outcome of the case:

> If the Commission is properly to discharge its duty in this regard, the record on which it bases its determination must be complete. The petitioners and the public at large have a right to demand this completeness. It is our view, and we find, that the Commission has failed to compile a record which is sufficient to support its decision. The Commission has ignored certain relevant factors and failed to make a thorough study of possible alternatives to the Storm King project. While the courts have no authority to concern themselves with the policies of the Commission, it is their duty to see to it that the Commission's decisions receive that careful consideration which the statute contemplates.[4]

See also *City of Pittsburgh* v. *FPC*, 237 F.2d 741, 751 n. 28 (D.C. Cir. 1956).

4. The "studies, memos and letters" by FPC personnel relating to serious discrepancies in the industry reserve figures should be disclosed to the public and made a part of the record in the pending Southern Louisiana Area Rate Proceedings. Clearly, the heretofore undisclosed

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[3] 15 U.S.C. § 717m (1964); emphasis added.

[4] 354 F.2d at 612.

Staff studies that "the evidence indicated errors up to 40 per cent in some of the industry data" [5] would

[13,384]

vitally affect the outcome of the case. These matters should be openly reviewed by all parties on the record and subjected to cross-examination so that the record would freely and fairly disclose the true state of facts relating to the reserve estimates in question.

5. Request is hereby made for the public disclosure to Petitioners of the "studies, memos and letters" identified in the newspaper articles by Jack Anderson [6] pursuant to the Freedom of Information Act, 5 U.S.C. § 552(a)(3) (1970 Ed.).

[13,385]

WHEREFORE, for the foregoing reasons, the Petitioners request that the Commission reopen the proceedings in this docket for the receipt into evidence and further investigation of the Staff reports referred to in the Anderson articles relating to substantial discrepancies between the industry reserve figures now in evidence in the record [7] with other evidence available to the Staff, and pursuant thereto, that the Commission make the indicated

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[5] Appendix A hereto, Jack Anderson article in Washington Post of Tuesday, June 15, 1971.

[6] Appendix A hereto.

[7] Exhibit 49 is the AGA Reserve Report for 1969 which was received into evidence over the objection of the Municipal Distributors Group and others.

Staff "studies, letters and memos" available under the Freedom of Information Act.

Respectfully submitted,

AMERICAN PUBLIC GAS ASSOCIATION

By /s/ Charles F. Wheatley, Jr.
CHARLES F. WHEATLEY, JR.
1111 Watergate Office Building
2600 Virginia Avenue, N.W.
Washington, D. C. 20037

General Counsel for American Public Gas Association

CONSUMER FEDERATION OF AMERICA

By /s/ Edward Berlin
EDWARD BERLIN
1910 N Street
Washington, D. C. 20036

General Counsel for Consumer Federation of America

[13,386]

AFFIDAVIT

DISTRICT OF COLUMBIA) SS.

Charles F. Wheatley, Jr., being first duly sworn on oath, deposes and says; that he has read the foregoing Petition filed on behalf of the American Public Gas Association and the Consumer Federation of America and knows the contents thereof; that he has been authorized to present the same on behalf of APGA and CFA and that the facts therein stated are true as he verily believes.

/s/ Charles F. Wheatley, Jr.
CHARLES F. WHEATLEY, JR.

Subscribed and sworn to before me this 24th day of June, 1971.

/s/ Nancy J. Zartman
Notary Public

My commission expires:
September 30, 1974

[13,387]

APPENDIX A

The Washington Post — Monday, June 14, 1971
The Washington Merry-Go-Round

FPC CHIEF AND NATURAL-GAS RATE RISE

By Jack Anderson

Federal Power Commission Chairman John Nassikas, who is supposed to protect the housewives from excessive gas charges, is pushing instead to add a whopping $4 billion to their bills based on industry-supplied information that conflicts with a study by the commission staff.

He has gone so far as to fail to reveal certain evidence and to mislead senators about the basis of the $4 billion rate increase.

The evidence—in the form of studies, letters and memos—has been kept under lock by Nassikas. Nevertheless, we have obtained copies of these documents.

Squeezing $4 billion out of the housewives, of course, is a complex operation. But here are the facts as simply as we can present them:

The Federal Power Commission fixes the basic rates that millions of consumers pay for natural gas. The gas producers always want to raise the rates, naturally, to increase their profits. But the FPC was established to keep the public from being gouged.

The producers are now seeking a rate increase on the gas they will draw from a vast Louisiana reservoir. The higher rate, which would be tacked on to the monthly bill of every householder who uses the gas, is supposed to be an incentive to encourage the producers to sink more wells.

Figures Disputed

The producers, according to the FPC staff, have greatly understated the amount of natural gas available under the Louisiana bed. Their figures make the risk and expense of sinking new wells appear to be far higher than is true.

The Ame.ican Gas Association, which speaks for the producers, estimated one part of the Louisiana reserves to be 24 trillion cubic feet. But the FPC's own experts, after careful calculation, came up with a 34 trillion figure. The difference of 10 trillion cubic feet would seriously weaken the producers' case for a rate increase.

Nassikas not only accepted the producers' figures but failed to reveal estimates that were damaging to the producers.

We know from copies of documents in our possession that the Federal Power Chairman was fully informed as early as Feb.uary 1970, by both his Economics and Producers divisions that the industry's figures were suspect. Yet he failed to reveal the discrepancy and sided with the gas producers in public statements, Senate hearings and congressional correspondence.

The FPC's experts based their estimates, in part, upon figures furnished by the pipeline companies. These fig-u.es were far higher than those submitted by the gas producers. But Nassikas told Sen. Philip Hart (D-Mich.), the Senate antitrust chairman, that the gas reserve figures from the producers and pipeline operators "closely parallel" each other. Nassikas knew from his own economic study, dated Feb. 12 that the figures were "surprisingly wide apart."

One of the FPC documents shows how the economic division had tried to persuade the FPC to uphold the consumers. Failing this, an appeal was made to Nassikas's

general counsel, Gordon Gooch, to amend the legal brief to show that the economics division had objected.

The economics office wrote a strong, detailed dissent. It not only was excluded from the legal brief but was put away in locked files. Thus, the economics experts were denied even the dignity of dissent.

Then, over the protest of consumer advocates, Nassikas took the $4 billion rate case away from a tough hearing examiner, Martin Rendelman. The American Public Gas Association, which fights for the consumers, tells us this move was unprecedented.

A former ruling from the FPC is still pending. Only an outpouring of mail from the housewives can save them from $4 billion in extra gas payments.

In coming days, we will quote more fully from the FPC documents. We will also turn the documents over to appropriate congressional authorities for action.

Footnote: Nassikas refused to talk with us. Gordon Gooch, his chief counsel, explained Nassikas cannot comment because the case is still pending. Gooch himself spoke emphatically with us for an hour, denying any suppression or wrongdoing by Nassikas or other FPC officials.

[13,388]

The Washington Post — Tuesday, June 15, 1971
The Washington Merry-Go-Round

FPC STAFF DISPUTED INDUSTRY DATA

By Jack Anderson

We have detailed how Federal Power Commission Chairman John Nassikas failed to reveal evidence and misled Congress on a proposed $4 billion rate increase for the natural gas producers.

This is a stupendous sum, which would be squeezed out of the customers in the form of higher monthly gas payments.

We have pieced together the story from a sheaf of memos and studies kept under lock at the FPC. Through a maze of intermediaries, however, we have obtained the papers.

It would take dozens of columns to publish them all, with their legal profundities and complexities. But here is the outline of our case against Nassikas:

The papers reveal that Nassikas ignored the studies of his own economists and relied upon the gas industry's information. The FPC, of course, is supposed to protect the public against the depredations of the gas barons. Yet Nassikas, speaking for the FPC, quoted industry figures to senators—figures that had been contradicted by the FPC's economists.

These figures had to do with the Louisiana gas reserves, which eventually will supply half the nation. The FPC's chief economist, Haskell Wald, found the industry's figures to be dubious.

On Feb. 12, 1970, Wald wrote a personal memo to Nassikas, warning that two crucial sets of industry data on gas reserves "can hardly be said to match each other."

He could see "no way of corroborating" some of the industry data. The FPC's own auditing, he said, "tells us nothing about the reliability" of the questionable information.

The industry's estimates, which should be consistent, show "surprisingly large differences" with many specific figures "surprisingly wide apart," he wrote.

The following day, Nassikas received another personal memo from Edward McManus, chief of the FPC's producer division, who warned that "the reliability of gas reserve estimates (by the industry) for any specific reservoir or field initially is suspect."

On Feb. 19, Wald sent an even blunter memo to Gordon Gooch, whom Nassikas had picked to be the FPC's chief counsel.

"We are concerned over the apparent lack of adequate checks on the statistical reporting operations," wrote Wald. He called attention to an industry error of 1.3 trillion cubic feet.

At this point, Nassikas and Gooch should have ordered an immediate, massive FPC staff investigation. Instead, they accepted the gas producers' figures.

Senate Antitrust Chairman Philip Hart (D-Mich.) got wind of the matter. In a Sept. 1 letter, Hart asked Nassikas explicitly about the information furnished by the natural gas industry.

In Nassikas' reply, dated Sept. 15, he said the two crucial sets of data "closely parallel" each other. To buttress this statement, he added: "The staff has also made specialized reports and conducted investigations."

This made it appear that the staff backed up the gas industry's figures when, in fact, the staff memos said exactly the opposite.

On Nov. 12, Nassikas again cited the industry figures at a Senate hearing before the Senate Fuels Subcommittee.

Chairman Frank Moss (D-Utah) asked: "You do have to rely . . . on industry figures?"

"Yes, but not entirely," said Nassikas. Later, he added that "there is substantial reliance, but . . . it is not non-analytical reliance." In its context, the statement gave the impression that the FPC's "analytical" studies supported the industry's figures. The opposite, of course, was true.

The next day, Wald jolted Nassikas with another memo disclosing that the FPC's studies and the industry's figures were out of kilter by a startling 42 per cent.

Wald followed this up with a strong memo to Gooch's office on Dec. 1 reiterating that the evidence indicated errors, up to 40 per cent in some of the industry data.

Eight days later, both Nassikas and Gooch again used the industrys figures at a Senate hearing chaired by Sen. Lee Metcalf (D-Mont.), an expert on the subject. Gooch testified that the industry's figures were "reasonably reliable."

Footnote: As we previously reported, Nassikas refused to discuss the $4 billion increase with us on the grounds that the case is still before him. Gooch has denied any wrongdoing by Nassikas or himself.

Sen. Gaylord Nelson (D-Wis.) is introducing a bill this week to force outboard motor firms to install anti-pollution devices. The motors dump millions of gallons of gas and oil into U.S. lakes and rivers each year. The bill would give the Environmental Protection Agency power to set standards for both old and new motors.

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[13,390]

[Caption Omitted]

ORDER FURTHER MODIFYING ORDER NO. 413

(Issued June 29, 1971)

In Order No. 413 issued October 27, 1970 in Docket No. R-394 (44 FPC ——) the Commission terminated the moratorium on above ceiling increased rate filings prescribed in Opinion Nos. 546 (40 FPC 530) and 546-A (41 FPC 301). Thereafter, on rehearing the Commission modified Order No. 413 by order issued December 24, 1970 in the above-entitled proceedings (44 FPC ——) to prohibit any increased rate filing in excess of the rate levels prescribed in Ordering Paragraph (A) of the December 24 order. Pursuant to Ordering Paragraph (B) in the December 24 order, the rate filing prohibition is to remain in effect until July 1, 1971.

By order issued March 15, 1971 in Docket Nos. AR61-2 and AR69-1 the intermediate decision procedure was omitted. Since then, the parties in these proceedings have filed initial and reply briefs in accordance with the time limitations set forth in the March 15 order. These proceedings are therefore now pending before the Commission for the determination of just and reasonable rates for sales in the Southern Louisiana area.

In these circumstances, we believe it appropriate for the same reasons set forth in the December 24 order to modify that order so as to extend the prohibition against increased rate

[13,391]

filings above the rate levels prescribed in Ordering Paragraph (A) thereof until September 30, 1971, or until the time the Commission issues an Opinion and Order establishing just and reasonable rates for jurisdictional sales from Southern Louisiana, whichever is the earlier date.

The Commission finds:

It is necessary and appropriate in the public interest and for carrying out the provisions of the Natural Gas Act that Order No. 413 be modified as hereinafter ordered.

The Commission orders:

(A) The limitations on increased rate filings set forth in Ordering Paragraph (A) of the Commission's order issued December 24, 1970 in the above-entitled proceedings shall remain in effect until September 30, 1971, or until such time as the Commission issues an Opinion and Order establishing just and reasonable rates for jurisdictional sales of natural gas from Southern Louisiana, whichever occurs at the earlier date.

(B) The Secretary of the Commission shall cause prompt publication of this order to be made in the Federal Register.

By the Commission.

KENNETH F. PLUMB
Secretary

[SEAL]

[13,392]

[Caption Omitted]

ORDER CONCERNING EX PARTE COMMUNICATIONS AND AUTHORIZING RELEASE OF INTRA-AGENCY DOCUMENTS

(July 2, 1971)

I.

The Commission takes note of certain articles appearing in the *Washington Post* (and other newspapers, sometimes in different text) under the by-line of Jack Anderson on June 14, 15, 20, 23, 26, 1971. Each *Post* article, which is attached hereto as exhibits A, B, C, D, and E, respectively, may constitute an attempt to influence the Commission's decision in the consolidated proceedings which bear the docket numbers AR61-2; AR69-1, by off-the-record communications. This case was instituted by Commission order May 10, 1961 and will be decided on the basis of the hearing record and pursuant to the Natural Gas Act and the Administrative Procedure Act. The record in the case is presently before the Commission. All parties have been given an opportunity to file evidence and to cross-examine witnesses, to file briefs and reply briefs. By order of March 15, 1971, the Commission found that due and timely execution of its functions required the omission of the intermediate decision by the hearing examiner, pursuant to Section 1.30 of the Commission's Rules of Practice and Procedure (18 CFR 1.30), and the case is now pending before the Commission for decision.

Since the Anderson articles, exhibits A to E of this order, may constitute ex parte communications within the prohibitions of Section 1.4(d) of the Commission's Rules of Practice and Procedure (18 CFR 1.4(d)), we have determined to apply subparagraph 2 of that Section:

> All written communications prohibited by subparagraph (1) of this paragraph shall be delivered to the Secretary of the Commission who should place the communications in the public files associated with the case, but separate from the record material upon which the Commission can rely in reaching a decision.

II.

Exhibits A to E refer to intra-agency memoranda which, under the Freedom of Information Act, 5 U.S.C. Section 552 (a)(5), are privileged. Under the exception to the Freedom of Information Act, the Commission is not required to release the memoranda. However, since this may be an attempt to prejudice or to influence the Commission's decisions in these proceedings, we find it to be in the public interest that the Commission's right to invoke this exception be waived on this occasion.

The Secretary, after consulting such other staff as he may deem necessary, is authorized to designate such intra-agency memoranda which he can identify from exhibits A to E of this order or related thereto which he will then place in the public files associated with this case.

Order Concerning Ex Parte Communications

The Commission finds:

1. Exhibits A to E consisting of articles appearing in the *Washington Post* and other newspapers on June 14, June 15, June 20, June 23, and June 26, 1971 may be ex parte, off-the-record communications by an interceder and an attempt to prejudice the public interest and persons involved in this proceeding, within the prohibitions of Section 1.4(d) of the Commission's Rules of Practice and Procedure.

[13,394]

2. The public interest under the circumstances of this case requires that the Commission waive its right, under the Freedom of Information Act, 5 U.S.C. Section 552 (d)(5), to maintain the confidentiality of the intra-agency memoranda referred to in the above-mentioned articles by Jack Anderson, and certain related memoranda.

The Commission orders:

1. The following communications shall be delivered to the Secretary of the Commission who shall place the communications in public files associated with these proceedings, but separate from the record material upon which the Commission can rely in reaching decisions:

Exhibit A. The article by Jack Anderson appearing in the *Washington Post* on Monday, June 14, 1971.

Exhibit B. The article by Jack Anderson appearing in the *Washington Post* on Tuesday, June 15, 1971.

Exhibit C. The article by Jack Anderson appearing in the *Washington Post* on Sunday, June 20, 1971.

Exhibit D. The article by Jack Anderson appearing in the *Washington Post* on Wednesday, June 23, 1971.

Exhibit E. The article by Jack Anderson appearing in the *Washington Post* on Saturday, June 26, 1971.

2. The Secretary is authorized to place the intra-agency memoranda which he designates pursuant to Part II of this order in the public file in the consolidated proceedings which bear the docket numbers AR61-2; AR69-1.

By the Commission.

KENNETH F. PLUMB
Secretary

[SEAL]

EXHIBIT A

The Washington Post — Monday, June 14, 1971
The Washington Merry-Go-Round

FPC CHIEF AND NATURAL-GAS RATE RISE

By Jack Anderson

Federal Power Commission Chairman John Nassikas, who is supposed to protect the housewives from excessive gas charges, is pushing instead to add a whopping $4 billion to their bills based on industry-supplied information that conflicts with a study by the commission staff.

He has gone so far as to fail to reveal certain evidence and to mislead senators about the basis of the $4 billion rate increase.

The evidence—in the form of studies, letters and memos —has been kept under lock by Nassikas. Nevertheless, we have obtained copies of these documents.

Squeezing $4 billion out of the housewives, of course, is a complex operation. But here are the facts as simply as we can present them:

The Federal Power Commission fixes the basic rates that millions of consumers pay for natural gas. The gas producers always want to raise the rates, naturally, to increase their profits. But the FPC was established to keep the public from being gouged.

The producers are now seeking a rate increase on the gas they will draw from a vast Louisiana reservoir. The higher rate, which would be tacked on to the monthly bill of every housewife who uses the gas, is supposed

to be an incentive to encourage the producers to sink more wells.

Figures Disputed

The producers, according to the FPC staff, have greatly understated the amount of natural gas available under the Louisiana bed. Their figures make the risk and expense of sinking new wells appear to be far higher than is true.

The American Gas Association, which speaks for the producers, estimated one part of the Louisiana reserves to be 24 trillion cubic feet. But the FPC's own experts, after careful calculation, came up with a 34 trillion figure. The difference of 10 trillion cubic feet would seriously weaken the producers' case for a rate increase.

Nassikas not only accepted the producers' figures but failed to reveal estimates that were damaging to the producers.

We know from copies of documents in our possession that the Federal Power Chairman was fully informed as early as February 1970, by both his Economics and Producers divisions that the industry's figures were suspect. Yet he failed to reveal the discrepancy and sided with the gas producers in public statements, Senate hearings and congressional correspondence.

The FPC's experts based their estimates, in part, upon figures furnished by the pipeline companies. These figures were far higher than those submitted by the gas producers. But Nassikas told Sen. Philip Hart (D-Mich.), the Senate antitrust chairman, that the gas reserve figures from the producers and pipeline operators "closely parallel" each other. Nassikas knew from his own economic study, dated Feb. 12 that the figures were "surprisingly wide apart."

One of the FPC documents shows how the economic division had tried to persuade the FPC to uphold the consumers. Failing this, an appeal was made to Nassikas's general counsel, Gordon Gooch, to amend the legal brief to show that the economics division had objected.

The economics office wrote a strong, detailed dissent. It not only was excluded from the legal brief but was put away in locked files. Thus, the economics experts were denied even the dignity of dissent.

Then, over the protest of consumer advocates, Nassikas took the $4 billion rate case away from a tough hearing examiner, Martin Rendelman. The American Public Gas Association, which fights for the consumers, tells us this move was unprecedented.

A former ruling from the FPC is still pending. Only an outpouring of mail from the housewives can save them from $4 billion in extra gas payments.

In coming days, we will quote more fully from the FPC documents. We will also turn the documents over to appropriate congressional authorities for action.

Footnote: Nassikas refused to talk with us. Gordon Gooch, his chief counsel, explained Nassikas cannot comment because the case is still pending. Gooch himself spoke emphatically with us for an hour, denying any suppression or wrongdoing by Nassikas or other FPC officials.

Washington Whirl

Phony Savings—The Office of Education has boasted in a house organ about reducing "the national debt by $169.45." This is the first royalty check from its program of copyrighting contract studies. What the office didn't mention is that it has spent tens of millions of tax dollars to pay for the studies, which will now be copyrighted.

Not only does the contractor get a piece of the royalties, but he also collects greater profits from the original contracts.

Animal Cruelty—A dog peddler, who was caught nearly three months ago with 107 uncaged dogs and nine cats in the stuffy, unventilated truck, is still licensed by the Agriculture Department to ship animals across state lines. The department's Animal Health Division, which is charged with enfo.cing federal animal care laws, hasn't bothered to revoke the license of North Carolina dog dealer John G. Seward. This is typical, say insiders, on the department's lackadaisical enforcement.

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EXCHANGE RATE HEARINGS SET

Reuter

Rep. Henry Reuss, (D-Wis.) said yesterday the recent dollar crisis in Europe and the continuing U.S. balance of payments deficits meant the time had come for Washington to examine the need for realigning international exchange rates.

He said this would be the subject of hearings that his House of Representatives Banking Subcommittee on International Exchange and payments will open Wednesday.

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EXHIBIT B

The Washington Merry-Go-Round
The Washington Post — Tuesday, June 15, 1971

FPC STAFF DISPUTED INDUSTRY DATA

By Jack Anderson

We have detailed how Federal Power Commission Chairman John Nassikas failed to reveal evidence and misled Congress on a proposed $4 billion rate increase for the natural gas producers.

This is a stupendous sum, which would be squeezed out of the customers in the form of higher monthly gas payments.

We have pieced together the story from a sheaf of memos and studies kept under lock at the FPC. Through a maze of intermediaries, however, we have obtained the papers.

It would take dozens of columns to publish them all, with their legal profundities and complexities. But here is the outline of our case against Nassikas:

The papers reveal that Nassikas ignored the studies of his own economists and relied upon the gas industry's information. The FPC, of course, is supposed to protect the public against the depredations of the gas barons. Yet Nassikas, speaking for the FPC, quoted industry figures to senators—figures that had been contradicted by the FPC's economists.

These figures had to do with the Louisiana gas reserves, which eventually will supply half the nation. The FPC's chief economist, Haskell Wald, found the industry's figures to be dubious.

On Feb. 12, 1970, Wald wrote a personal memo to Nassikas, warning that two crucial sets of industry data on gas reserves "can hardly be said to match each other."

He could see "no way of corroborating" some of the industry data. The FPC's own auditing, he said, "tells us nothing about the reliability" of the questionable information.

The industry's estimates, which should be consistent, show "surprisingly large differences" with many specific figures "surprisingly wide apart," he wrote.

The following day, Nassikas received another personal memo from Edward McManus, chief of the FPC's producer division, who warned that "the reliability of gas reserve estimates (by the industry) for any specific reservoir or field initially is suspect."

On Feb. 19, Wald sent an even blunter memo to Gordon Gooch, whom Nassikas had picked to be the FPC's chief counsel.

"We are concerned over the apparent lack of adequate checks on the statistical reporting operations," wrote Wald. He called attention to an industry error of 1.3 trillion cubic feet.

At this point, Nassikas and Gooch should have ordered an immediate, massive FPC staff investigation. Instead, they accepted the gas producers' figures.

Senate Antitrust Chairman Philip Hart (D-Mich.) got wind of the matter. In a Sept. 1 letter, Hart asked Nassikas explicitly about the information furnished by the natural gas industry.

In Nassikas' reply, dated Sept. 15, he said the two crucial sets of data "closely parallel" each other. To buttress this statement, he added: "The staff has also made specialized reports and conducted investigations."

This made it appear that the staff backed up the gas industry's figures when, in fact, the staff memos said exactly the opposite.

On Nov. 12, Nassikas again cited the industry figures at a Senate hearing before the Senate Fuels Subcommittee.

Chairman Frank Moss (D-Utah) asked: "You do have to rely . . . on industry figures?"

"Yes, but not entirely," said Nassikas. Later, he added that "there is substantial reliance, but . . . it is not non-analytical reliance." In its context, the statement gave the impression that the FPC's "analytical" studies supported the industry's figures. The opposite, of course, was true.

The next day, Wald jolted Nassikas with another memo disclosing that the FPC's studies and the industry's figures were out of kilter by a startling 42 per cent.

Wald followed this up with a strong memo to Gooch's office on Dec. 1 reiterating that the evidence indicated errors, up to 40 per cent in some of the industry data.

Eight days later, both Nassikas and Gooch again used the industrys figures at a Senate hearing chaired by Sen. Lee Metcalf (D-Mont.), an expert on the subject. Gooch testified that the industry's figures were "reasonably reliable."

Footnote: As we previously reported, Nassikas refused to discuss the $4 billion increase with us on the grounds that the case is still before him. Gooch has denied any wrongdoing by Nassikas or himself.

Sen. Gaylord Nelson (D-Wis.) is introducing a bill this week to force outboard motor firms to install anti-pollution devices. The motors dump millions of gallons of gas and oil into U.S. lakes and rivers each year. The bill would give the Environmental Protection Agency power to set standards for both old and new motors.

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EXHIBIT C

Jack Anderson

NAVY FINDS FLAWS IN LOCKHEED SHIPS

THE GREAT Lockheed conglomerate, whose aircraft operations have become a front-page scandal, has also had unpublicized troubles with its shipbuilding. One piece of machinery aboard a Lockheed ship, according to the Navy inspector's confidential report, was held together with baling wire.

The embattled corporation is building five new destroyers for the Navy in Seattle. Navy inspectors found enough problems in the first Lockheed ship, the Rathburne, to fill a 148-page, single-spaced "Acceptance Trial Deficiency List."

"Lube oil leaks under turbine are cooking on turbine drain lines, possible fire hazard," is just one of the hundreds of faults found on the Rathburne.

A few others: "unreliable" weapons systems, malfunctioning radar, steering system breakdowns, hot pipes that lack guards "to protect ship's personnel from burn injuries," faulty firefighting gear. The goofs have now been laboriously corrected.

The second Lockheed destroyer, the Reasoner, also was plagued with problems. These included the machinery fastened by bailing wire, numerous oil leaks, faulty welding and crumbling fire brick in the boiler.

Only the last-minute intervention by an alert admiral in Washington held up the Reasoner's acceptance trials and prevented a possible disaster at sea.

Rear Adm. Nathan Sonenshein, 3,000 miles away from Seattle, studied his inspector's pre-trial reports before the Reasoner was supposed to put to sea. He noted that fuel drips had been detected near the boilers and insulation was missing on hot steam pipes.

Lockheed put off the trials until the safety-related failures have been fixed to the admiral's satisfaction. Sonenshein says the Reasoner is now shipshape and should be accepted by the Navy this month.

Gas Scandal

WE HAVE reported how the Federal Power Commission, under the prod of Chairman John Nassikas, has suppressed its own figures and adopted the gas industry's figures to justify a $4 billion rate increase.

This staggering amount would be added to the monthly bills of the gas users.

The industry's request for higher rates is based upon gas reserve figures that FPC economists have warned may be off as much as 40 per cent. Yet their warnings have been hushed up to keep the consumers from finding out how badly they would be bilked.

The sheer magnitude of the figures makes the story difficult to comprehend, but the documents Nassikas has tried to suppress show all too clearly that he has been scheming against the consumers.

As we have reported, the gas producers are trying to wangle a rate increase from the FPC for the natural gas they draw out of a vast Louisiana reservoir. At issue are trillions of cubic feet of Louisiana gas reserves, which eventually will supply half the nation.

To support their case for higher rates, the gas producers have furnished the FPC with figures which the FPC's

economics chief, Haskell Wald, has challenged. He expressed his concern in a confidential memo, dated Dec. 1, 1970, to the legal office.

Like all bureaucratic communications, the memo was worded cautionsly. Wald knew his boss, the fiery-tempe.ed Nassikas, was pushing to raise the rates.

The figures provided by the American Gas Association, representing the producers, might be helpful on broad trends, Wald suggested tactfully. But the industry figures were highly questionable, he cautioned, for assessing the need for a rate increase.

Nassikas' general counsel, Gordon Gooch, completely igno.ed Wald's warnings and prepared an FPC brief so larded with pro-gas arguments that it is incredible it could have come from a federal regulatory agency established to protect the consumers.

Instead of condemning the industry's misleading figures, Gooch actually cited them as evidence that the gas producers deserve a rate increase.

Footnote: Gooch told us all sides presented their arguments at the hearings and all elements of the FPC were heeded in the preparation of his briefs. But he acknowledged the final wording, which omitted Wald's views, was his own. Wald, when we asked him about his memos, said: "You have no business having them. All that is an internal matter." Nassikas himself has refused to speak to us, claiming he can't comment while the case is before him.

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EXHIBIT D

The Washington Post — Wednesday, June 23, 1971
The Washington Merry-Go-Round

MAY 14 FPC GAS MEMO MOST DAMNING

By Jack Anderson

Of all the suppressed documents dealing with the attempt to add $4 billion to the consumer's gas bills, the most damning is a May 14 memo written by Federal Power Commission economists.

They flatly refused to go along with Chairman John Nassikas's plan to grant $4 billion in rate increases to Gulf, Texaco, Humble, Sunoco, Shell, Mobil, Phillips and other gas giants with holdings in the vast Louisiana natural gas fields.

Nassikas suppressed the economists' objections, ignored their figures and accepted the self-serving figures of the gas industry. We have already reported how he also withheld the facts from Congress and the public.

The case for raising rates was made by Nassikas's general counsel Gordon Gooch, who drafted a lengthy legal brief justifying the gigantic hornswoggle.

The Office of Economics took vigorous exception to Gooch's figures, facts and arguments. Not only were ringing dissents made, but the economists demanded that their disagreement be written into the brief.

Instead, the dissenting memo was locked up with the other Nassikas papers, which reveal how the Federal Power Chairman has promoted gas interests instead of the public interest he was sworn to uphold.

Gooch contended in his legal brief, for instance, that an FPC "field audit served to verify the accuracy" of industry figures on natural gas reserves. The economists dissented.

Gooch also claimed that "capital is now and will continue to be in short supply" to "overcome the current gas supply crisis." This was a key argument for giving the gas boys what they wanted. The economists vigorously disagreed.

Gooch argued that granting the rate would automatically "make the drilling for gas . . . more attractive" to the gas companies. The economists objected.

Gooch's brief also made the point that "uncommitted proved reserve held by producers is extremely small" and, therefore, that the rate increases are necessary. Register our dissent, said the economists.

Dissents were entered against Gooch's pro-industry findings on the cost of wells, production, operations, exploration, and royalties. Indeed, the Office of Economists refused to go along with 13 consecutive pages of Gooch's brief, the heart of his argument for the $4 billion boondoggle.

In a word, the economists took exception almost to the entire Gooch case.

Yet Gooch buried the memo deep in his files and submitted his brief to the commissioners with no hint that the FPC's best economists had raised a howl against the $4 billion giveaway.

Car Repair Kickback

Most auto body shops would think twice before committing to paper a kickback arrangement with insurance agents who send them clients' cars to be repaired.

No such modesty possessed Larry Brotman, president of Brotman Autobody Center, a Los Angeles repair service since 1935. Brotman gleaned the names of 100 insurance men from the telephone book and wrote them that "the big idea behind this letter is to tell you that I want to work with you.

"I have the pleasure of paying the rent for quite a few insurance men who refer their customers to me. You will receive as much as $80 for any referral you may make to me."

To further enhance the kickback scheme, Brotman agreed to provide the insurance clients with free cars during the repair work.

We asked Brotman about his brazen plan, and he was as frank as his letter. Yes, he said, "perhaps it was" unethical. But he said he was careful to avoid offering the kickbacks to insurance companies themselves, because this might have violated the law.

"These are kickbacks to (individual) agents," he explained. However, Brotman said, not a single insurance man had accepted a kickback and he had gotten only $390 in business out of his 100 letters.

Brotman said his advertising agency put him up to the letter writing. But, he added ruefully, "It didn't work at all."

Total Recall

The Pentagon, wary of further leaks of the top secret documents on Vietnam which were front-paged by the New York Times, is recalling the 15 volumes of the documents known to exist. Actually, hints of the document's existence have been known to millions of Americans for

months. PARADE's Lloyd Shearer first revealed that the controversial Vietnam volumes were being hidden away at the Pentagon. On Oct. 25, 1970, he wrote that "several months before Lyndon Johnson oozed him out of the Pentagon, (former Defense Secretary Robert) McNamara assigned a task force under Les Gelb to undertake the most thorough, in-depth study of the war. "There are relatively few copies in existence," Shearer wrote. "There are no plans to make it public."

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EXHIBIT E

The Washington Post Saturday, June 26, 1971
The Washington Merry-Go-Round

SECRET GAS RATE SESSION IS THWARTED

As part of a Federal Power Commission effort to ramrod through a $4 billion gas rate increase, FPC officials set up an illegal, secret meeting with an industry spokesman only weeks before his case was to be heard.

The clandestine affair was thwrated by a pro-consumer FPC official who charged that the secret session would violate FPC regulations and could lead to a sellout to the natural gas industry.

We learned of the meeting from a sheaf of confidential documents which were slipped to us so that we might inform the public of the costly hornswaggle which would affect half the United States.

The plot to sock the American housewife with a shopping gas rate increase is a complicated affair, as we explained in earlier columns. What it boils down to is this:

FPC Chairman John Nassikas and his pro-industry underlings sought to grant $4 billion worth of increases by using gas industry figures which they had already been told were unreliable. These figures—disputed by Nassikas' own economics staff—attempt to show that the industry must get huge rate increases if it is to develop new gas reserves.

FPC rules clearly state that no staffer can meet off-the-record with a potential witness who is directly involved

in a disputed case. This rule is designed to prevent the FPC from giving away its case or making any deals with the potent industries it is supposed to regulate.

Yet Tom Joyce, head of the Bureau of Natural Gas, set up a closed-door meeting between the FPC top brass and John Jacobs—the persuasive chairman of the Gas Reserves Committee of the American Gas Association.

The conference was expressly designed to exclude consumer advocates like the American Public Gas Association, who were also parties to the rate cases.

In a memo dated March 18, 1970, FPC General Counsel Gordon Gooch, the very man charged with enforcing the commission's rules, gave the meeting his personal approval —even though John Jacobs was scheduled to testify on the case on May 1, 1970.

On March 23, a few days before Jacobs was to huddle with his supposed regulators, an FPC official revolted.

Haskell Wald, head of the FPC Office of Economics and long a fighter for the consumer, outlined his apprehension in a confidential memorandum to General Counsel Gooch.

Wald's memo is worth quoting at length for it shows more vividly than any of the Nassikas papers the Byzantine world of the FPC, where pro-consumers and pro-industry factions are locked in combat.

"It will be a closed meeting," Wald wrote. "There will be no transcript or official minutes and there will not even be a public announcement that it is being held."

Some quarters already viewed the industry figures with "intense suspicion," Wald said. He warned of the "danger of criticism of word of the meeting and the subjects discussed reaches outsiders."

Jacobs would be "clued in" by the meeting on what his testimony should be and might "also gather suggestions on how he should shape the responses on cross-examination. No other witness will be given this advantage."

Wald frankly suggested it might well "create an impression of collusion." Finally, he said, such a meeting viladter both written rules and "definite instructions" and therefore should be called off.

Wald's timely protest succeeded. The meeting was canceled a few days before it was to be held.

Gooch asserted to my associate Les Whitten that he was "responsible for calling it off." He did not mention Wald's protest or his own earlier approval of the meeting. Nassikas has declined comment. Jacobs was in Morocco and could not be reached.

Footnote: Rep. Neal Smith (D-Iowa), chairman of the House Small Business Special Problems subcommittee, is calling Nassikas in July to testify on our revelations. Our documents, said Smith, cast doubt on the FPC's figures. Smith said it appeared that small businessmen, housewives and the poor would be victimized by the $4 billion increase.

Brazilian Sugar Plum

We told earlier this month how millions of dollars in U.S. sugar quotas were handed to racist South Africa despite congressional strictures against buying sugar from nations that discriminate against American citizens.

We have now learned that the Brazilian dictatorship will receive a 519,900-ton sugar quota worth millions despite a congressional edict from the House Agriculture

Committee barring quotas to countries where the benefits don't sift down to the people who grow the sugar.

Instead, Brazil's dictatorship sees to it that the sugar oligarchs in the northeast plantations get the sugar cash from the U.S. Few of the benefits reach the workers.

Sen. Fred Harris (D-Okla.), however, has been working to curtail giveaways to countries where the American bounty never reaches the workers in the field.

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